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CRIMINAL LAW AND PROCEDURE

Brittany A. Dunn-Pirio *
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INTRODUCTION

This Article surveys recent developments in criminal procedure and law in Virginia. Because of space limitations, the authors have limited their discussion to the most significant published appellate decisions and legislation.

I. CRIMINAL PROCEDURE

A. *Appellate Procedure*

In *Stacey v. Commonwealth*, the Court of Appeals of Virginia determined that Stacey had waived a challenge to the court's authority to order the euthanization of her dangerous dog because she had failed to raise the issue on appeal from her conviction for owning a dangerous dog.¹ Several years after her conviction, Stacey argued for the first time that the Albemarle County Circuit Court lacked the authority to order the euthanization of her dangerous dog, which the circuit court had ordered as a condition of her suspended sentence.² The court of appeals determined that the law of

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1. 73 Va. App. 85, 95, 854 S.E.2d 668, 672 (2021).
2. *Id.* at 94, 854 S.E.2d at 672.

the case doctrine barred consideration of the issue because Stacey had failed to challenge the condition of suspended sentence on her first appeal.³ The appellate court, therefore, affirmed the judgment of the circuit court.⁴

In *Delp v. Commonwealth*, the court of appeals considered whether the appellant waived his right to appeal the trial court's denial of his motion for new counsel.⁵ Assuming without deciding that recent Supreme Court of the United States cases modified Virginia's rule that a guilty plea is a waiver of all nonjurisdictional rulings and cures all constitutional defects, the court held that Delp waived his right to an appeal because (1) the trial court found his pleas and waiver of rights "were entered into knowingly, voluntarily, and intelligently," and (2) Delp confirmed to the court that his counsel had shown him the evidence as instructed which was the basis for his motion for new counsel.⁶

In *Gomez v. Commonwealth*, the Court of Appeals of Virginia refused to consider the appellant's arguments on appeal that there was a fatal variance in his indictments because he waived this issue on appeal when he failed to object to it during the trial.⁷ The court reaffirmed the principle that a fatal variance in an indictment will only be set aside after a verdict has been rendered if it is so defective that it violates the appellant's constitutional rights.⁸

In *Riddick v. Commonwealth*, Riddick was tried and convicted of several driving offenses in the general district court.⁹ He noted an appeal to the Chesapeake City Circuit Court where he was convicted in a bench trial.¹⁰ On appeal, he argued that the circuit court lacked subject matter jurisdiction because the record did not contain a jury trial waiver.¹¹ The Court of Appeals of Virginia determined that the circuit court clearly had subject matter jurisdiction over an appeal from misdemeanor convictions in the district

3. *Id.* at 94–95, 854 S.E.2d at 672.

4. *Id.* at 95, 854 S.E.2d at 672–73.

5. 72 Va. App. 227, 230, 843 S.E.2d 758, 760 (2020).

6. *Id.* at 241–42, 843 S.E.2d at 766.

7. 72 Va. App. 173, 178–79, 843 S.E.2d 379, 382–83 (2020).

8. *Id.* at 176, 843 S.E.2d at 381.

9. 72 Va. App. 132, 137, 842 S.E.2d 419, 421 (2020).

10. *Id.* at 137, 842 S.E.2d at 421–22.

11. *Id.* at 138–39, 842 S.E.2d at 422.

court.¹² The court did not reach the issue of a waiver of a jury trial because Riddick had not raised it in an assignment of error.¹³

In *Nelson v. Commonwealth*, the court of appeals addressed Supreme Court of Virginia Rule 1:1.¹⁴ Nelson challenged the trial court's denial of her motion for a new trial.¹⁵ Although the last order entered in the case was the conviction order, the Staunton City Circuit Court ruled that it lacked jurisdiction to consider the motion because twenty-one days had passed from the entry of the final order.¹⁶ In the trial court, Nelson agreed that Rule 1:1 applied.¹⁷ On appeal, Nelson argued that Rule 1:1 did not apply.¹⁸ Although the court of appeals noted the trial court committed error because the actual final order—the sentencing order—had not been entered, it ultimately dismissed Nelson's appeal because her attorney approbated and reprobated.¹⁹ The court of appeals refused to apply Rule 5A:18's ends of justice exception because there is no ends of justice exception to the approbate and reprobate doctrine.²⁰

B. *Automobile Stops and Searches*

In *Bagley v. Commonwealth*, Bagley challenged his conviction for possession of a Schedule I or II controlled substance with intent to distribute, second offense.²¹ The evidence at trial established that officers received a call for a disorderly situation and report of a brandished firearm.²² Upon arriving at the scene and finding a vehicle and occupant in the driver's seat that matched the description given, the officers noticed the appellant, "engage in 'furtive movement,' 'very rapidly' 'throwing' or 'shooting' his hands 'straight down,' toward the bottom half of the car."²³ After making

12. *Id.* at 143–45, 842 S.E.2d at 425–26.

13. *Id.* at 145–46, 842 S.E.2d at 426.

14. 71 Va. App. 397, 402–03, 837 S.E.2d 60, 62 (2020); VA. SUP. CT. R. 1:1 (Repl. Vol. 2021).

15. *Id.* at 402, 837 S.E.2d at 62.

16. *Id.* at 401, 837 S.E.2d at 61–62.

17. *Id.* at 401, 837 S.E.2d at 61–62.

18. *Id.* at 404, 837 S.E.2d at 63.

19. *Id.* at 403–05, 837 S.E.2d at 62–63.

20. *Id.* at 405, 837 S.E.2d at 63–64; VA. SUP. CT. R. 5A:18 (Repl. Vol. 2021).

21. 73 Va. App. 1, 8, 854 S.E.2d 177, 180 (2021).

22. *Id.* at 8–9, 854 S.E.2d at 180.

23. *Id.* at 9, 854 S.E.2d at 180–81.

these movements, the appellant opened the car door, got out, and walked quickly toward a nearby apartment building.²⁴ The officers stopped him from going inside in order to speak to him about the alleged disturbance and frisked the appellant for weapons.²⁵ The officers then conducted a protective sweep of the driver's seat of the vehicle and found white powder and a digital scale in the space underneath it, where it appeared the appellant had been reaching.²⁶ A subsequent search of the rest of the vehicle revealed over eighty grams of crack and powder cocaine.²⁷

The appellant argued that the Henrico County Circuit Court erred by denying his motion to suppress, as the search of the vehicle was unreasonable under the Fourth Amendment.²⁸ The court of appeals found that the circumstances the officers were confronted with when they arrived at the scene matched the details of the description they were given by the complainant, who had provided identifying information to the dispatcher, allowing the officers to give the tip more weight than an anonymous caller's; thus, the evidence supported the reasonable inference that the appellant might have committed the brandishing or have information about it.²⁹ Further, the appellant's actions upon the officers' arrival heightened the officers' suspicion, allowing the officers to reasonably act to minimize any threat by conducting the pat-down.³⁰ However, the fact that the pat-down did not reveal any weapons only served to heighten the officers' suspicion regarding the appellant's furtive movements immediately prior to hastily leaving the car; thus, the same facts which supported the frisk of the appellant supported the search of his immediate surroundings in the vehicle when no weapon was found on his person.³¹

In *McArthur v. Commonwealth*, the court of appeals overturned the Richmond City Circuit Court's denial of appellant's motion to suppress.³² The facts established that officers initiated a traffic

24. *Id.* at 10, 854 S.E.2d at 181.

25. *Id.* at 10, 854 S.E.2d at 181.

26. *Id.* at 10, 854 S.E.2d at 181.

27. *Id.* at 10–11, 854 S.E.2d at 181.

28. *Id.* at 12, 854 S.E.2d at 182.

29. *Id.* at 17–18, 20–21, 854 S.E.2d at 184–86.

30. *Id.* at 18, 854 S.E.2d at 185.

31. *Id.* at 19, 854 S.E.2d at 185–86.

32. 72 Va. App. 352, 357, 369, 845 S.E.2d 249, 251, 257 (2020).

stop on the appellant in a high-crime area for a defective fog light.³³ The appellant, who was polite and cooperative, informed the officers that the vehicle was his girlfriend's, that as far as he knew there were no weapons in the vehicle, and he refused consent to search the vehicle.³⁴ While the first officer spoke with McArthur, the second was running the appellant's information through police databases, which returned an alert that he was thought to have been a member of the "Crips" gang during a previous incarceration.³⁵ After the appellant refused consent, the officer ordered him out of the vehicle, at which point he began to sweat profusely and stated to his girlfriend on the phone that "they are locking me up."³⁶ A subsequent search of the vehicle revealed a 9mm handgun under the driver's seat, and the appellant was arrested.³⁷

The appellant filed a motion to suppress, which was denied by the trial court, and he was subsequently found guilty of possession of a firearm as a violent felon.³⁸ The court of appeals agreed that the firearm should have been suppressed, finding that the appellant's conduct during the stop did not give rise to reasonable articulable suspicion, as he was polite and cooperative and made no furtive movements, and petitioner's location in a high-crime area, standing alone, was insufficient to support the search.³⁹

In *Joyce v. Commonwealth*, the Court of Appeals of Virginia determined that a police officer had a reasonable suspicion to initiate a traffic stop.⁴⁰ Based on an anonymous tip, police were on the lookout for a green sedan.⁴¹ An officer located a green sedan parked at a drug store; the driver was drinking from a blue can.⁴² When the police officer moved closer, the car drove away.⁴³ The officer

33. *Id.* at 357, 845 S.E.2d at 251.

34. *Id.* at 357, 845 S.E.2d at 251–52.

35. *Id.* at 357, 845 S.E.2d at 251.

36. *Id.* at 358, 845 S.E.2d at 252.

37. *Id.* at 358, 845 S.E.2d at 252.

38. *Id.* at 358, 845 S.E.2d at 252.

39. *Id.* at 361–63, 845 S.E.2d at 253–54 (holding also that the collective knowledge doctrine did not apply, as the officer with the appellant was not informed by the other officer of the appellant's alleged gang affiliation until after the search).

40. 72 Va. App. 9, 12, 840 S.E.2d 571, 573 (2020).

41. *Id.* at 12, 840 S.E.2d at 573.

42. *Id.* at 12, 840 S.E.2d at 573.

43. *Id.* at 12, 840 S.E.2d at 573.

followed the car to a red light where the car signaled to turn left.⁴⁴ When the light turned green, the sedan remained motionless for six or seven seconds, and there were no vehicles in the intersection.⁴⁵ The officer stopped the green sedan for failure to obey a green light; Joyce, the driver, had a blood alcohol level of .134.⁴⁶ Joyce moved to suppress the evidence recovered as a result of the traffic stop, arguing that his failure to move through the green signal did not provide reasonable suspicion to support a stop.⁴⁷ The court of appeals disagreed, ruling that some prolonged stops at green lights violate the statute, and others do not.⁴⁸ In this case, the court concluded that the officer had reasonable suspicion that Joyce failed to obey a green signal because he remained motionless at the green light for six or seven seconds, and there were no vehicles in the intersection.⁴⁹

In *Williams v. Commonwealth*, Williams was convicted of possessing a stolen firearm and possession of marijuana, subsequent offense.⁵⁰ A police officer stopped Williams after seeing his car speed and swerve.⁵¹ The officer asked Williams if there were any firearms in the car; Williams responded that he had a concealed permit.⁵² The officer asked four times where the firearm was, and Williams “responded vaguely that it was concealed.”⁵³ The officer went to his car to write two summonses; when he returned, he asked Williams to step out of the car to get him away from a large dog and to observe Williams’s motor skills.⁵⁴ As Williams stepped out, the officer observed the butt of a large revolver in Williams’s jacket and detected the odor of burnt marijuana; the officer seized the gun for safety purposes.⁵⁵ The officer ran the serial number through a database and determined it was stolen; when so informed, Williams did not appear surprised and said that he bought

44. *Id.* at 12, 840 S.E.2d at 573.

45. *Id.* at 12, 840 S.E.2d at 573.

46. *Id.* at 13, 840 S.E.2d at 573.

47. *Id.* at 13, 840 S.E.2d at 573.

48. *Id.* at 16, 840 S.E.2d at 575.

49. *Id.* at 16, 840 S.E.2d at 575.

50. 71 Va. App. 462, 471–72, 837 S.E.2d 91, 96 (2020).

51. *Id.* at 472, 837 S.E.2d at 96.

52. *Id.* at 472, 837 S.E.2d at 96.

53. *Id.* at 472, 837 S.E.2d at 96.

54. *Id.* at 472–73, 837 S.E.2d at 96.

55. *Id.* at 473, 837 S.E.2d at 96.

it from “a person.”⁵⁶ The officer performed a field test on a leafy substance seized from Williams, which indicated it was marijuana.⁵⁷

On appeal, Williams challenged the denial of a motion to suppress concerning the firearm.⁵⁸ The Court of Appeals of Virginia determined that the officer had probable cause to seize the firearm because Williams was vague when answering the officer’s questions, and, when Williams exited the car, the officer could see the butt of the gun in Williams’s jacket pocket, meaning that there was a threat to officer safety.⁵⁹ Once the officer had lawfully seized the gun, the appellate court determined that there was no Fourth Amendment issue with the observation of the gun’s serial number and running it through a database.⁶⁰

C. Brady Obligations⁶¹

In *Warnick v. Commonwealth*, Warnick was convicted for a murder and robbery which occurred in 1988.⁶² The facts at trial established that, on the day of the murder, the appellant and the victim attended a party along the Shenandoah River.⁶³ The appellant, the victim, and an unknown third party went on a “beer run” to a nearby store, and when the appellant and the third party returned, the victim was not with them.⁶⁴ Warnick claimed that the Loudoun County Circuit Court improperly admitted a witness’s testimony that she had given birth the night before the victim’s disappearance, as she had previously told police that she had given birth prior to the date of the river party, and the Commonwealth committed a *Brady* violation by failing to turn this over.⁶⁵ The court of appeals denied the claim, finding no *Brady* violation had been committed as the testimony was not material to the issues in the case,

56. *Id.* at 473, 837 S.E.2d at 96.

57. *Id.* at 473, 837 S.E.2d at 97.

58. *Id.* at 474, 837 S.E.2d at 97.

59. *Id.* at 477–78, 837 S.E.2d at 98–99.

60. *Id.* at 478–81, 837 S.E.2d at 99–100.

61. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

62. 72 Va. App. 251, 256, 844 S.E.2d 414, 417 (2020).

63. *Id.* at 257, 844 S.E.2d at 417.

64. *Id.* at 258, 844 S.E.2d at 417.

65. *Id.* at 269, 844 S.E.2d at 423.

and the evidence was made available to the appellant, who cross-examined the witness about the statement, in time to use at trial.⁶⁶

In *Church v. Commonwealth*, the Court of Appeals of Virginia determined that the Commonwealth had met its *Brady* obligations during Church's trial for object sexual penetration of a child and taking indecent liberties with a child.⁶⁷ At trial, Church's counsel raised an objection during cross-examination of the child victim; he argued that the Commonwealth had failed to disclose that the victim said that Church had threatened her sister and that this testimony was inconsistent with her statements to the medical examiner.⁶⁸ The next day, the prosecutor reported that the victim reported that, the morning after the abuse, Church had asked to abuse her again, and the victim could not identify a pair of underwear as hers.⁶⁹ Church declined the opportunity to question the victim and instead made a motion to dismiss.⁷⁰ The court of appeals determined that the child's inability to identify her underwear was not a *Brady* violation because this evidence was not exculpatory.⁷¹ Concerning the victim's allegedly inconsistent statements and the stepmother's testimony, the appellate court determined that the Commonwealth had met its *Brady* obligations because *Brady* is not violated when evidence is made available during trial, as it was here.⁷²

D. Confrontation Issues

In *Alvarez Saucedo v. Commonwealth*, the appellant asserted that the video recording of the victim's child forensic interview violated his Sixth Amendment right to confront because the victim did not "testify" when she could not remember specifics about her interview; the court of appeals disagreed.⁷³ The court explained that the Confrontation Clause was satisfied when the appellant

66. *Id.* at 269–70, 844 S.E.2d at 423.

67. 71 Va. App. 107, 112, 834 S.E.2d 477, 480 (2019).

68. *Id.* at 115, 834 S.E.2d at 482.

69. *Id.* at 115, 834 S.E.2d at 482.

70. *Id.* at 116, 834 S.E.2d at 482.

71. *Id.* at 118–19, 834 S.E.2d at 483–84.

72. *Id.* at 119–21, 834 S.E.2d at 484–85.

73. 71 Va. App. 31, 45–46, 833 S.E.2d 900, 907 (2019).

cross-examined the minor victim about her inability to remember the interview and discussed this issue in closing.⁷⁴

E. *Deferred Proceedings*

In *Vandyke v. Commonwealth*, Vandyke argued that the Richmond City Circuit Court misinterpreted Virginia Code section 18.2-258.1, criminalizing obtaining morphine by fraud, and abused its discretion by refusing to allow a deferred disposition.⁷⁵ After the trial court “found the appellant guilty as charged,” Vandyke asked the court to defer a finding.⁷⁶ Ten days later, the trial court entered an order stating that it had found Vandyke guilty.⁷⁷ Vandyke argued that the court had merely found facts sufficient to convict and requested that the court defer the finding.⁷⁸ The court of appeals affirmed the case and explained that the trial court lost the authority to enter a deferred disposition because “a trial court’s inherent authority to defer disposition lasts until the court finds the defendant guilty” and that this principle also applies to section 18.2-258.1.⁷⁹

F. *Double Jeopardy*

In the consolidated appeals of *Evans v. Commonwealth* and *Conway v. Commonwealth*, the Supreme Court of Virginia confronted the issue of whether Virginia Code section 19.2-294 precludes a prosecution for possession of a firearm by a convicted felon when the defendant was convicted in a prior prosecution of carrying a concealed weapon arising out of the same circumstances.⁸⁰ The defendants argued that, under the plain language of section 19.2-294, their convictions for possession of a firearm as convicted felons must be dismissed.⁸¹ The Court found that section 19.2-294 prevents the Commonwealth from subjecting an accused to multiple

74. *Id.* at 46, 833 S.E.2d at 907.

75. 71 Va. App. 723, 727, 840 S.E.2d 8, 9 (2020); VA. CODE ANN. § 18.2-258.1 (Repl. Vol. 2014).

76. *Id.* at 727–28, 840 S.E.2d at 10.

77. *Id.* at 728, 840 S.E.2d at 10.

78. *Id.* at 728, 840 S.E.2d at 10.

79. *Id.* at 732, 736–37, 840 S.E.2d at 12, 14 (emphasis omitted).

80. *Evans v. Commonwealth*, 299 Va. 330, 332–33, 850 S.E.2d 669, 670–71 (2020); § 19.2-294 (Cum. Supp. 2021).

81. *Evans*, 299 Va. at 334, 850 S.E.2d at 671–72.

prosecutions.⁸² However, the Court found that section 19.2-294 bars a subsequent prosecution based on the “same act.”⁸³ The Court held that the proper test to determine if double jeopardy bars prosecution requires three elements to be met: (1) the defendant was previously prosecuted; (2) the prior prosecution resulted in a conviction; and (3) the prior prosecution was based on the “same act.”⁸⁴

Applying that test to the two cases before it, the Court found that both defendants were separately convicted of carrying a concealed weapon in a first prosecution and possessing a firearm as a convicted felon in a second prosecution.⁸⁵ The Court held that the defendants would have first had to possess the guns and then, in a separate act, conceal them.⁸⁶ Thus, the additional act of concealing the weapons made it a different act than possessing the weapons.⁸⁷ Accordingly, section 19.2-294 did not bar the successive prosecutions, and the Court affirmed the defendants’ convictions.⁸⁸

G. *Duty of the Prosecutor*

In *Price v. Commonwealth*, the Court of Appeals of Virginia reversed and remanded Price’s conviction for assault and battery.⁸⁹ The Commonwealth’s Attorney’s Office declined to participate and chose to allow the case to continue as a “citizen’s complaint.”⁹⁰ The attorney who represented the victim in a civil suit against Price entered an appearance as a private prosecutor.⁹¹ The court of appeals observed that private prosecutors are permitted in Virginia, but only to assist the public prosecutor in the case, and the public prosecutor must remain in control of the prosecution.⁹² The appellate court concluded that the public prosecutor’s office appeared to have no control of the case, and the private prosecutor had a conflict of interest that violated Price’s due process rights due to the attorney’s simultaneous representation of the victim in a civil suit

82. *Id.* at 335, 850 S.E.2d at 672.

83. *Id.* at 335, 850 S.E.2d at 672.

84. *Id.* at 340, 850 S.E.2d at 675.

85. *Id.* at 340, 850 S.E.2d at 675.

86. *Id.* at 341, 850 S.E.2d at 675.

87. *Id.* at 341, 850 S.E.2d at 675.

88. *Id.* at 341, 850 S.E.2d at 675.

89. 72 Va. App. 474, 849 S.E.2d 140 (2020).

90. *Id.* at 483, 849 S.E.2d at 144.

91. *Id.* at 483, 849 S.E.2d at 144.

92. *Id.* at 486–88, 849 S.E.2d at 145–47.

against Price.⁹³ The court of appeals went on to conclude that such an error was not subject to harmless error analysis due to the “fundamental and pervasive” prejudicial effects on the proceedings as well as the need to demonstrate the appearance of justice.⁹⁴

H. *Evidence*

In *Kenner v. Commonwealth*, the Supreme Court of Virginia determined that the trial court had not abused its discretion in admitting evidence of the titles of files depicting child pornography found on Kenner’s computer.⁹⁵ Kenner was convicted of, inter alia, custodial sexual abuse.⁹⁶ The child victim testified that Kenner sexually abused her while showing her pornographic videos depicting adults on his computer.⁹⁷ The Court concluded that the titles of child pornography files were relevant evidence of other crimes to demonstrate Kenner’s inappropriate sexualized attitude toward children generally and the victim specifically.⁹⁸ Additionally, this evidence established Kenner’s motive, method, and intent.⁹⁹

In *Warnick v. Commonwealth*, Warnick alleged that the Loudoun County Circuit Court erred in refusing to allow him to introduce evidence of third-party guilt.¹⁰⁰ The Court of Appeals of Virginia determined that there was no merit to this claim, as the witness that the appellant sought to call would have testified to hearsay evidence that another individual had told the witness that the appellant committed the crime.¹⁰¹ Although the declarant was deceased and therefore unavailable, the reliability requirement was not satisfied because there was no other evidence linking the declarant to the killing, other than his presence at the party, along with forty other people, on the day of the murder.¹⁰²

The appellant further alleged that the trial court erred by allowing a witness to testify under Rule 2:613(a)(ii) that she had made

93. *Id.* at 488–90, 849 S.E.2d at 147–48.

94. *Id.* at 490–91, 849 S.E.2d at 148.

95. 299 Va. 414, 427, 854 S.E.2d 493, 500 (2021).

96. *Id.* at 418, 854 S.E.2d at 495.

97. *Id.* at 419, 854 S.E.2d at 496.

98. *Id.* at 424–27, 854 S.E.2d at 499–500.

99. *Id.* at 427, 854 S.E.2d at 500.

100. 72 Va. App. 251, 256, 844 S.E.2d 414, 417 (2020).

101. *Id.* at 264–65, 844 S.E.2d at 421.

102. *Id.* at 264–65, 844 S.E.2d at 421.

inconsistent statements regarding whether or not the appellant had killed the victim in this case because she was afraid of the appellant because he “raped women.”¹⁰³ The court of appeals held that, although the trial court’s reliance on Rule 2:613(a)(ii) was misplaced as the appellant was not attempting to introduce extrinsic evidence of the witness’ inconsistent statement, the court reached the correct result because caselaw establishes that a witness may be allowed to explain a prior inconsistent statement.¹⁰⁴ Thus, the witness was permitted to testify as to her reasons for making inconsistent statements once the appellant opened the door, and the trial court correctly denied the appellant’s motion for a mistrial on that basis.¹⁰⁵

In *Chenevert v. Commonwealth*, the court of appeals held that Virginia Code section 19.2-268.3 permitted the admission of a letter and drawings produced by a child sexual abuse victim.¹⁰⁶ The evidence at trial showed that the child victim gave her mother a letter stating that the appellant had inappropriate sexual contact with her.¹⁰⁷ The victim was subsequently interviewed by a forensic interviewer, and the child drew or wrote on provided paper.¹⁰⁸ During the appellant’s criminal proceedings, the Commonwealth filed a motion pursuant to section 19.2-268.3 to admit the letter, the drawings, and a video of the forensic interview, which was granted by the trial court.¹⁰⁹

The court of appeals ruled that the letter was covered by the statute, as there was no indication in the plain language of the statute that it was meant to only cover statements made during forensic interviews; rather, it applied broadly to any statements made by a child victim describing the offense, which clearly included the letter.¹¹⁰ The Court also determined that the drawings were admissible as they were clearly statements under Rule 2:801(a).¹¹¹ Accordingly, both the letter and drawings were

103. *Id.* at 266–67, 844 S.E.2d at 422; VA. SUP. CT. R. 2:613(a)(ii) (Repl. Vol. 2021).

104. *Warnick*, 72 Va. App. at 267, 844 S.E.2d at 422.

105. *Id.* at 267, 844 S.E.2d at 422.

106. 72 Va. App. 47, 51–52, 840 S.E.2d 590, 592 (2020); VA. CODE ANN. § 19.2-268.3 (Cum. Supp. 2021).

107. *Chenevert*, 72 Va. App. at 52, 840 S.E.2d at 592.

108. *Id.* at 53, 840 S.E.2d at 592.

109. *Id.* at 53, 840 S.E.2d at 593.

110. *Id.* at 57, 840 S.E.2d at 594–95.

111. *Id.* at 58, 840 S.E.2d at 595; VA. SUP. CT. R. 2:801(a) (Repl. Vol. 2021).

properly admitted, and the appellant's convictions were affirmed.¹¹²

Antonio Jones was charged with aggravated sexual battery of a child at least thirteen years old, but younger than eighteen.¹¹³ At trial, the Commonwealth sought to introduce portions of an audio recording in which the victim and the victim's mother confronted Jones about the incident.¹¹⁴ The court of appeals concluded that the victim's statements on the recording were not hearsay, but were admitted to provide context to Jones' statements (which were admissible as admissions by a party).¹¹⁵

In *Murray v. Commonwealth*, Murray was convicted of possession of a firearm by a felon.¹¹⁶ The evidence established that an officer attempted to initiate a traffic stop on her for a taillight issue, but she fled, dropped a magazine for a .45 caliber handgun, and failed to stop at several stop signs.¹¹⁷ Police recovered a .45 caliber handgun under the front passenger seat of the vehicle.¹¹⁸ The appellant alleged that the Hampton City Circuit Court erred by allowing a detective to testify that the gun was "designed to propel a missile by an action of explosion by any combustible," as he was not qualified as an expert witness.¹¹⁹ The court of appeals disagreed, finding that Rule 2:701 allows opinion testimony by a lay witness if it is reasonably based on the personal experience or observations of the witness; thus, the detective's opinion which was based on his training, experience, and observations was admissible.¹²⁰

In *Hicks v. Commonwealth*, the court of appeals addressed whether the Mecklenburg County Circuit Court erred when it excluded the appellant's proffered impeachment evidence that the child victim had previously made false accusations of sexual misconduct against others under Rule 2:608(b)(1).¹²¹ The Court noted

112. *Chenevert*, 72 Va. App. at 59–60, 840 S.E.2d at 596.

113. *Jones v. Commonwealth*, 71 Va. App. 597, 601, 838 S.E.2d 563, 564 (2020).

114. *Id.* at 601, 838 S.E.2d at 564.

115. *Id.* at 604–05, 838 S.E.2d at 566.

116. 71 Va. App. 449, 452–53, 837 S.E.2d 85, 87 (2020).

117. *Id.* at 453, 837 S.E.2d at 87.

118. *Id.* at 453, 837 S.E.2d at 87.

119. *Id.* at 454, 456–57, 837 S.E.2d at 87–89.

120. *Id.* at 456–58, 837 S.E.2d at 89; VA. SUP. CT. R. 2:701 (Repl. Vol. 2021).

121. 71 Va. App. 255, 275–76, 835 S.E.2d 95, 105 (2019) (affirming the appellant's convictions for rape, aggravated sexual battery, and indecent liberties); VA. SUP. CT. R. 2:608(b)(1) (Repl. Vol. 2021).

that “a trial court does not abuse its discretion when it concludes that an alleged offender’s [self] denial [or denial of others] is insufficient to support the admission of his . . . testimony to prove a prior false accusation for impeachment purposes.”¹²² The court of appeals held that the trial court did not abuse its discretion because the appellant failed to make a threshold showing that such allegations were made and were false.¹²³

In *Raspberry v. Commonwealth*, Raspberry was convicted of a number of firearm and drug offenses.¹²⁴ On appeal, he argued that the Hampton City Circuit Court erred in admitting the court records regarding his prior criminal history.¹²⁵ At trial, Raspberry objected to the admission of three certified orders because they were not physically signed by a judge.¹²⁶ The orders, however, were electronically signed and contained the embossed seal of the court.¹²⁷ The Court of Appeals of Virginia determined that the orders were admissible pursuant to Virginia Code section 8.01-389.¹²⁸

In *Lambert v. Commonwealth*, Lambert was convicted of a bevy of drug offenses and three counts of sex trafficking.¹²⁹ The Court of Appeals of Virginia determined that the Chesterfield County Circuit Court properly admitted evidence that Lambert was a member of the “Bloods,” because that evidence tended to prove that Lambert used intimidation to prostitute the victim.¹³⁰ The court of appeals also determined that the trial court had properly limited Lambert’s cross examination of the victim because the jury was already aware of the victim’s prior drug use and criminal sentence, and additional evidence may have confused the jury.¹³¹ Additionally, evidence of the victim’s prior voluntary prostitution was not relevant and may have confused the jury.¹³²

122. *Hicks*, 71 Va. App. at 277, 835 S.E.2d at 106.

123. *Id.* at 278, 835 S.E.2d at 106–07.

124. 71 Va. App. 19, 22, 833 S.E.2d 894, 896 (2019).

125. *Id.* at 22, 833 S.E.2d at 896.

126. *Id.* at 24, 833 S.E.2d at 896–97.

127. *Id.* at 24, 833 S.E.2d at 897.

128. *Id.* at 26–28, 833 S.E.2d at 898–99; VA. CODE ANN. § 8.01-389 (Repl. Vol. 2015).

129. 70 Va. App. 740, 745–46, 833 S.E.2d 468, 471 (2019).

130. *Id.* at 750–52, 833 S.E.2d at 473–75.

131. *Id.* at 753–56, 833 S.E.2d at 475–76.

132. *Id.* at 756–58, 833 S.E.2d at 476–77.

I. *Indictments*

In *Warnick v. Commonwealth*, Warnick challenged the Loudoun County Circuit Court's denial of his motion to dismiss for denial of his due process rights due to the twenty-seven year delay in indicting the defendant.¹³³ The Court of Appeals of Virginia held that the appellant had failed to show either actual prejudice or improper purpose on the part of the Commonwealth; although the appellant proffered that thirteen witnesses had died due to the delay, he failed to state what they would have testified to that would have helped the appellant, and further, there was no evidence that the delay was intentional, rather than due to witnesses' fear of appellant.¹³⁴ Accordingly, the judgment of the trial court was affirmed.¹³⁵

J. *Interrogations*

In *Alvarez Saucedo v. Commonwealth*, the appellant challenged the denial of his motion to suppress statements he made to a detective.¹³⁶ While participating in a voluntary polygraph examination, the detective told the appellant that the appellant should "walk out of the room' if appellant's 'tongue touched [the minor's] vagina."¹³⁷ The appellant argued that this transformed his voluntary polygraph examination into a custodial interrogation and violated his *Miranda*¹³⁸ rights.¹³⁹ The court of appeals held that the statements did not violate his Fifth Amendment right because the appellant participated in the polygraph voluntarily, was not restrained or handcuffed, the detective assured the appellant he could leave at any time and demonstrated that the door was not locked, and the appellant appeared relaxed throughout the interview.¹⁴⁰

In *Bass v. Commonwealth*, Bass alleged that the Cumberland County Circuit Court erred by denying his motion to suppress due to the police's denial of his right to an attorney during an

133. 72 Va. App. at 272–73, 844 S.E.2d at 425.

134. *Id.* at 273, 844 S.E.2d at 425.

135. *Id.* at 273–74, 844 S.E.2d at 425.

136. 71 Va. App. 31, 37, 833 S.E.2d 900, 903 (2019).

137. *Id.* at 42, 833 S.E.2d at 905.

138. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

139. 71 Va. App. at 40, 833 S.E.2d at 904.

140. *Id.* at 43, 833 S.E.2d at 905–06.

interview.¹⁴¹ The evidence established that, during an interview with police, after he had been Mirandized, the appellant made the statement “Is there any way uh I could have um like a an attorney or something present or a lawyer or something and um maybe a like a mental health professional?” and later, “What difference would it make if I um waited for like a lawyer and like a mental health professional?”¹⁴² The court of appeals held that the trial court’s finding that the appellant’s words were a question, not a clear and unequivocal invocation of the right to counsel, was supported by the evidence, and thus, that a reasonable officer would only have understood that appellant, at most, *might* be invoking the right to counsel, not clearly and unambiguously requesting one.¹⁴³ Accordingly, the trial court did not err, and the convictions were affirmed.¹⁴⁴

K. *Jury Instructions*

In *Dandridge v. Commonwealth*, the Court of Appeals of Virginia reversed and remanded Dandridge’s conviction for second-degree murder, ruling that the Chesterfield County Circuit Court should have instructed the jury as to voluntary manslaughter.¹⁴⁵ The Court concluded that there was at least a scintilla of evidence that Dandridge acted without malice and in a furor brevis in the killing of the victim.¹⁴⁶ Furthermore, the Court noted that the trial court had instructed the jury as to self-defense, and it would be an “unusual” case in which the evidence generated a self-defense instruction, but not voluntary manslaughter.¹⁴⁷

In *Richard v. Commonwealth*, Richard assigned error to the Floyd County Circuit Court’s (1) denial of her motion to strike the conspiracy charge because she claimed the evidence only proved a single buyer-seller transaction occurred and (2) refusal to instruct the jury “that a single buyer-seller transaction may not constitute a conspiracy.”¹⁴⁸ Although the Court of Appeals of Virginia found

141. 70 Va. App. 522, 529–30, 829 S.E.2d 554, 558 (2019).

142. *Id.* at 529–30, 829 S.E.2d at 558.

143. *Id.* at 540–41, 829 S.E.2d at 563.

144. *Id.* at 543, 829 S.E.2d at 564.

145. 72 Va. App. 669, 686, 852 S.E.2d 488, 496 (2021).

146. *Id.* at 682–85, 852 S.E.2d at 494–95.

147. *Id.* at 683, 852 S.E.2d at 494.

148. 72 Va. App. 598, 606, 851 S.E.2d 68, 72 (2020).

the evidence was sufficient, it reversed the conviction because “more than a scintilla” of credible evidence supported the jury instruction.”¹⁴⁹

L. *Jury Trials*

In *Jiddou v. Commonwealth*, Jiddou argued that the Chesterfield County Circuit Court erred in ordering a jury trial upon the Commonwealth’s request.¹⁵⁰ The Court of Appeals of Virginia determined that the accused does not have a constitutional right to a bench trial, and the Commonwealth may equally elect a jury trial.¹⁵¹ The court of appeals determined that the Commonwealth properly elected a jury trial and had not previously waived it.¹⁵²

In *Ramos v. Commonwealth*, the Court of Appeals of Virginia determined that the Charlottesville City Circuit Court had not erred in refusing to dismiss potential jurors who were aware that another person was convicted the prior day for a malicious wounding of the same victim as Ramos.¹⁵³ During voir dire, several potential jurors stated that they were aware that another person was convicted the prior day, but their knowledge varied and came from media reports.¹⁵⁴ The Court declined to find a per se rule for disqualification, especially because the potential jurors’ knowledge varied and did not come from official proceedings.¹⁵⁵ Additionally, the Court determined that Ramos had waived any challenge to venue and the evidence was sufficient to support his conviction for malicious wounding, even though Ramos punched the victim once.¹⁵⁶

In *Goodwin v. Commonwealth*, Goodwin alleged that the Charlottesville City Circuit Court erred in refusing to strike several jurors.¹⁵⁷ During voir dire, several jurors admitted to knowledge of the “Unite the Right” rally through media reports and that some

149. *Id.* at 616–17, 851 S.E.2d at 77.

150. 71 Va. App. 353, 371, 836 S.E.2d 700, 708 (2019).

151. *Id.* at 372, 836 S.E.2d at 709.

152. *Id.* at 372, 836 S.E.2d at 709.

153. 71 Va. App. 150, 153–54, 834 S.E.2d 499, 500 (2019).

154. *Id.* at 155–56, 834 S.E.2d at 501.

155. *Id.* at 156–60, 834 S.E.2d at 502–03.

156. *Id.* at 160–63, 834 S.E.2d at 504–05.

157. 71 Va. App. 125, 128–29, 834 S.E.2d 487, 488 (2019).

were aware of and participated in counter-protests.¹⁵⁸ The court of appeals disagreed, finding that while some of the jurors gave some equivocal answers, the larger context and all the responses given during the voir dire of each juror were less equivocal and showed that they could be fair and impartial; thus, the trial court did not err.¹⁵⁹ Further, the court held that although some of the jurors indicated sympathies counter to the “Unite the Right” protesters, none of them were directly affected by the violence, and all of them indicated that they could put aside any bias or prejudice and give the appellant a fair trial on the merits.¹⁶⁰ Thus, none of the jurors displayed a fixed opinion which repelled the presumption of innocence; accordingly, the trial court did not err in refusing to strike them for cause.¹⁶¹

M. *Pleas*

In *Meekins v. Commonwealth*, after pleading guilty to voluntary manslaughter, the appellant appealed the Richmond City Circuit Court’s exclusion of specific prior bad acts that would have established the victim had a violent, aggressive, and controlling character, “particularly towards women and while under the influence of cocaine” at the sentencing hearing.¹⁶² The Court of Appeals of Virginia held the trial court did not abuse its discretion because, by pleading no contest to voluntary manslaughter, the appellant waived her right to present a self-defense case and the evidence she tried to present at the sentencing hearing would have excused her criminal act.¹⁶³

N. *Right to Counsel*

In *Walker v. Commonwealth*, the Court of Appeals of Virginia concluded that Walker had waived his right to counsel by his conduct.¹⁶⁴ Over the course of the litigation, the Hampton City Circuit Court had appointed eight lawyers to serve as Walker’s counsel,

158. *Id.* at 130–34, 834 S.E.2d at 489–91.

159. *Id.* at 137–38, 834 S.E.2d at 492–93.

160. *Id.* at 139–43, 834 S.E.2d at 493–95.

161. *Id.* at 139–43, 834 S.E.2d at 493–95.

162. 72 Va. App. 61, 64–67, 73, 841 S.E.2d 365, 366–68, 370 (2020) (finding that any error was harmless after the appellant also challenged the exclusion of hearsay evidence).

163. *Id.* at 70–71, 841 S.E.2d at 369.

164. 71 Va. App. 665, 677–78, 839 S.E.2d 123, 128–29 (2020).

and each time, counsel filed motions to withdraw.¹⁶⁵ The court cautioned Walker multiple times that he needed to cooperate with counsel, and his refusal to do so could result in a waiver of counsel.¹⁶⁶ Walker proceeded pro se at trial and argued on appeal that the circuit court had violated his right to counsel.¹⁶⁷ The court of appeals determined that Walker had waived his right to counsel based on his conduct; the Court stated that Walker purposefully developed conflicts with each counsel as part of “an intentional strategy of delay.”¹⁶⁸ The court of appeals concluded that Walker’s conduct constituted an abuse of the right to counsel, and the trial court attempted multiple times to caution Walker.¹⁶⁹

O. *Role of the Defense Attorney*

In *Robinson v. Commonwealth*, the Court of Appeals of Virginia determined that Robinson had procedurally defaulted the issue of whether the Prince William County Circuit Court had properly denied his motion to sever.¹⁷⁰ Robinson was charged with three counts of grand larceny and one count each of robbery, use or display of a firearm in the commission of a robbery, and abduction.¹⁷¹ Prior to trial, his counsel filed a motion to sever the grand larceny charges from the others.¹⁷² After conferring with counsel, Robinson decided to waive a jury trial.¹⁷³ Counsel acknowledged that proceeding with a bench trial resolved the severance issue.¹⁷⁴ Upon returning from a recess, Robinson’s counsel informed the court that Robinson was renewing the motion to sever, but that counsel disagreed.¹⁷⁵ The court of appeals determined that Robinson had not properly made a motion to sever because such a motion is an example of a tactical decision made by counsel.¹⁷⁶ Because it was clear that counsel was not advancing the motion that Robinson wanted to pursue, and such a motion was clearly within the

165. *Id.* at 668–72, 839 S.E.2d at 124–26.

166. *Id.* at 668–72, 839 S.E.2d at 124–26.

167. *Id.* at 671–72, 839 S.E.2d at 126.

168. *Id.* at 675, 839 S.E.2d at 127.

169. *Id.* at 675–76, 839 S.E.2d at 127–28.

170. 72 Va. App. 244, 844 S.E.2d 411 (2020).

171. *Id.* at 246–47, 844 S.E.2d at 412.

172. *Id.* at 247, 844 S.E.2d at 412.

173. *Id.* at 247, 844 S.E.2d at 412.

174. *Id.* at 247, 844 S.E.2d at 412.

175. *Id.* at 247, 844 S.E.2d at 412.

176. *Id.* at 248–49, 844 S.E.2d at 413.

province of counsel to decide, the court of appeals determined that the motion to sever was not properly before the trial court.¹⁷⁷

P. *Searches*

In *Saal v. Commonwealth*, the Court of Appeals of Virginia confronted the question of whether police entry on a home's curtilage to gather information pertaining to a criminal investigation during pre-dawn hours by conducting a "knock-and-talk" without a warrant violated the Fourth Amendment.¹⁷⁸ The evidence at trial established that a witness observed a vehicle later linked to the appellant driving erratically and with a blown right-front tire late at night.¹⁷⁹ Police were able to track the vehicle to a residential address and arrived at the address around 12:30 AM.¹⁸⁰ The officers approached the house and knocked on the front door.¹⁸¹ There was no response to the officers' knocks on the front door; they then followed a path and knocked on a door connected to an illuminated room, and the appellant answered.¹⁸² Upon being questioned by the police, the appellant made incriminating statements and was arrested for driving under the influence.¹⁸³

Saal argued that the Virginia Beach City Circuit Court erred in denying his motion to suppress the statements, as the officers' entry onto his curtilage at 12:30 AM without a warrant was unreasonable in violation of the Fourth Amendment.¹⁸⁴ The court of appeals determined that the officers had entered the appellant's curtilage but were engaging in a "knock-and-talk," an exception to the warrant requirement for a home's curtilage.¹⁸⁵ The Court specified factors to consider in assessing the reasonableness of nighttime approaches, including the time of the approach, whether the officer's approach was open or clandestine, whether the officer confined himself to the driveway and associated pathways where the general public would be expected to go, whether lights were on, and whether cars outside the residence suggested the presence of

177. *Id.* at 250, 844 S.E.2d at 414.

178. 72 Va. App. 413, 418, 848 S.E.2d 612, 614 (2020).

179. *Id.* at 418, 848 S.E.2d at 614.

180. *Id.* at 418, 848 S.E.2d at 614.

181. *Id.* at 419, 848 S.E.2d at 615.

182. *Id.* at 419, 848 S.E.2d at 615.

183. *Id.* at 419–20, 848 S.E.2d at 615.

184. *Id.* at 420, 848 S.E.2d at 615.

185. *Id.* at 422–23, 848 S.E.2d at 616–17.

people who may be awake.¹⁸⁶ The Court determined the officer's entry onto the curtilage was reasonable because the time of night, which tended to be less reasonable, was outweighed by the fact that a witness had recently seen Saal driving and that there were lights on in the house, indicating that the inhabitant was not asleep.¹⁸⁷ Accordingly, the officers' entry onto the curtilage was reasonable, and the judgment was affirmed.¹⁸⁸

In *Bryant v. Commonwealth*, Bryant challenged the denial of a motion to suppress evidence recovered from a suitcase and a safe.¹⁸⁹ Responding to an apartment for a domestic violence situation, officers located Bryant in the parking lot.¹⁹⁰ His girlfriend was taking things to her car from the apartment and said that she was leaving.¹⁹¹ The girlfriend told police the apartment was in her name and consented to a search of the apartment.¹⁹² Police found a large suitcase in the master bathroom and a safe on top of the toilet.¹⁹³ Police found contraband in the suitcase; the girlfriend stated that the suitcase belonged to Bryant.¹⁹⁴ Police applied for a search warrant for the safe and recovered ammunition and \$7000 in cash from the safe.¹⁹⁵

The Williamsburg-James City County Circuit Court denied the motion to suppress as to the suitcase and the safe.¹⁹⁶ The court of appeals affirmed the denial of the motion to suppress, ruling that the officers reasonably relied on the girlfriend's consent to search the suitcase.¹⁹⁷ There was no outward identifying information on the suitcase, and the girlfriend still had items in the apartment; the police could reasonably assume that the suitcase belonged to the girlfriend, and her consent encompassed the suitcase.¹⁹⁸ The court of appeals went on to conclude that the search warrant affidavit for the safe, relying solely on the evidence recovered from the

186. *Id.* at 425–26, 848 S.E.2d at 618.

187. *Id.* at 427, 848 S.E.2d at 619.

188. *Id.* at 429, 848 S.E.2d at 620.

189. 72 Va. App. 179, 184, 843 S.E.2d 383, 385 (2020).

190. *Id.* at 182, 843 S.E.2d at 384.

191. *Id.* at 182, 843 S.E.2d at 384.

192. *Id.* at 183, 843 S.E.2d at 385.

193. *Id.* at 184, 843 S.E.2d at 385.

194. *Id.* at 184, 843 S.E.2d at 385.

195. *Id.* at 184, 843 S.E.2d at 385–86.

196. *Id.* at 186, 843 S.E.2d at 386.

197. *Id.* at 188–90, 843 S.E.2d at 387–90.

198. *Id.* at 189–90, 843 S.E.2d at 388.

suitcase and the search incident to arrest, was sufficient to provide probable cause to search the safe.¹⁹⁹

Q. *Sentencing*

In *Holloway v. Commonwealth*, the Court of Appeals of Virginia considered whether Virginia Code section 19.2-303.01 permitted a court to sentence a defendant below the statutory minimum sentence provided by section 18.2-248(C).²⁰⁰ Holloway pled guilty to possession with intent to distribute a Schedule I or II substance, third or subsequent offense, and the Norfolk City Circuit Court sentenced him to the mandatory minimum sentence.²⁰¹ Holloway subsequently provided assistance to the Commonwealth in the prosecution of another person for murder, and the Commonwealth filed a motion to reduce Holloway's sentence pursuant to section 19.2-303.01.²⁰² The trial court determined that it did not have any authority to sentence below the mandatory minimum sentence.²⁰³ The appellate court reversed, concluding that section 19.2-303.01 permits a court to sentence below a mandatory minimum when a defendant provides assistance to the government because the statute begins "[n]otwithstanding any other provision of law or rule of court"²⁰⁴

In *Martinez v. Commonwealth*, Martinez was convicted of aggravated sexual battery of a child under the age of thirteen.²⁰⁵ The Augusta County Circuit Court ordered that Martinez be incarcerated with the Department of Juvenile Justice ("DJJ") until he reached twenty-one years of age, at which point he was to be transferred to the Department of Corrections ("DOC"); however, the court suspended all the time to be served in DOC on the condition that he remain in DJJ custody until his twenty-first birthday.²⁰⁶ After the appellant's unsatisfactory adjustment to incarceration with DJJ, the court held a hearing at which it found that the appellant would not benefit from further commitment to DJJ; thus,

199. *Id.* at 190–91, 843 S.E.2d at 388–89.

200. 72 Va. App. 370, 846 S.E.2d 19 (2020); VA. CODE ANN. § 19.2-303.01 (Cum. Supp. 2021); § 18.2-248(C) (Repl. Vol. 2014).

201. 72 Va. App. at 371–72, 846 S.E.2d at 19–20.

202. *Id.* at 372, 846 S.E.2d at 20.

203. *Id.* at 372, 846 S.E.2d at 20.

204. *Id.* at 375, 846 S.E.2d at 21.

205. 71 Va. App. 318, 321, 836 S.E.2d 1, 2 (2019).

206. *Id.* at 321–22, 836 S.E.2d at 2.

the court ordered that he begin serving the balance of the sentence imposed in DOC, with all time suspended except for five years.²⁰⁷ The court subsequently held another hearing to clarify its order.²⁰⁸

The appellant alleged that the original order finding that the appellant was not performing satisfactorily in DJJ and transferring him to DOC was void ab initio as it impermissibly increased his original sentence and transferred him to DOC prior to his twenty-first birthday, and that the trial court erroneously identified section 16.1-285.2(E)(i) as governing his transfer.²⁰⁹ The court of appeals disagreed, finding that although the trial court's citation to section 16.1-285.2(E)(i) was incorrect, the court reached the right result, as the court had the power to revoke the suspended sentence and transfer him to DOC.²¹⁰ The condition of suspension of the DOC sentence that the appellant remain in DJJ custody until he was twenty-one was reasonable given the appellant's age, the nature of the crime, and the opportunity for treatment in DJJ, and the trial court's order was not rendered void by its citation to the incorrect statute when it reached the correct result.²¹¹ Accordingly, the trial court's decisions were affirmed.²¹²

In *Lee v. Commonwealth*, the appellant argued "that the period of suspension of a suspended sentence must begin running upon the trial court's pronouncement of the suspension."²¹³ The Court of Appeals of Virginia disagreed and held that "there is no statute or case law requiring a period of suspension to begin upon the trial court's pronouncement of the suspension of a sentence."²¹⁴ It explained that there are two periods of good behavior: one period while the defendant is incarcerated and one period while the defendant is on probation.²¹⁵ The Court then turned to the revocation order and held that the Suffolk City Circuit Court clearly intended to have the period of good behavior commence upon "release from confinement."²¹⁶

207. *Id.* at 323–24, 836 S.E.2d at 3–4.

208. *Id.* at 324–25, 836 S.E.2d at 4.

209. *Id.* at 329, 836 S.E.2d at 6; VA. CODE ANN. § 16.1-285.2(E)(i) (Cum. Supp. 2021).

210. *Id.* at 330, 836 S.E.2d at 6–7.

211. *Id.* at 332, 836 S.E.2d at 7–8.

212. *Id.* at 333, 836 S.E.2d at 8.

213. 71 Va. App. 205, 207, 834 S.E.2d 525, 526 (2019).

214. *Id.* at 213, 834 S.E.2d at 530.

215. *Id.* at 213, 834 S.E.2d at 529.

216. *Id.* at 213, 834 S.E.2d at 530.

In *Davis v. Commonwealth*, Davis was convicted of malicious wounding and robbery in 1995 and sentenced to twenty years imprisonment on each charge, with fourteen suspended.²¹⁷ In 2006, the appellant committed a murder, and in 2018, after hearing evidence regarding the murder, the Sussex County Circuit Court revoked the appellant's 1995 suspensions and imposed the remaining time.²¹⁸ On appeal, the appellant alleged that the trial court lacked authority to revoke his suspended sentence for the 1995 malicious wounding.²¹⁹ The court of appeals disagreed, finding that the trial court's interpretation of the language of its original sentencing order that the sentence be suspended for the "maximum period required by law" meant that the sentence was "suspended as long as the law allowed."²²⁰ Accordingly, the trial court had suspended the sentence for the duration of the appellant's life, thus the trial court correctly concluded that the suspended sentence could be revoked.²²¹

R. Severance

In *Cousett v. Commonwealth*, Cousett argued that the Virginia Beach Circuit Court erred in failing to sever his charges involving one victim from the charges involving another.²²² On appeal, he argued that the trial court erred by refusing to sever the two incidents, as the Commonwealth had not satisfied Rule 3A:10(c) by showing that justice did not require separate trials and by showing that the offenses met the requirements of Rule 3A:6.²²³ The court of appeals agreed with the appellant, holding that the Commonwealth had only argued that the offenses were a "common scheme" under Rule 3A:6(b), and that it had failed to establish that by showing that the offenses were "closely connected in time, place, and means of commission," as the only commonalities were the entry of the residences of two female victims ("I.P." and "T.H.") through unlocked front doors.²²⁴ However, the Court found that the refusal to

217. 70 Va. App. 722, 725, 833 S.E.2d 87, 88 (2019).

218. *Id.* at 725–26, 833 S.E.2d at 88.

219. *Id.* at 730–31, 833 S.E.2d at 91.

220. *Id.* at 732, 833 S.E.2d at 91.

221. *Id.* at 731–34, 833 S.E.2d at 91–92.

222. 71 Va. App. 49, 53–54, 833 S.E.2d 908, 910–11 (2019).

223. *Id.* at 54, 833 S.E.2d at 910–11; VA. SUP. CT. R. 3A:10(c), 3A:6 (Repl. Vol. 2021).

224. *Cousett*, 71 Va. App. at 59, 833 S.E.2d at 913 (quoting *Walker v. Commonwealth*, 289 Va. 410, 416, 770 S.E.2d 197, 199 (2015)).

sever was harmless, as the evidence of crimes against I.P. and her identification of the appellant would have been admissible at a separate trial for the offenses against T.H.²²⁵ The evidence that a Black male entered two apartments of lone females the same way, close in time and location, while carrying a white bag, would have been admissible “other crimes” evidence of identity had there been separate trials.²²⁶ Accordingly, as the evidence would have been admissible anyway, the error in failing to sever the trials was harmless, and the convictions were affirmed.²²⁷

S. *Sex Offender Registry*

In *Bailey v. Commonwealth*, Bailey was convicted of failing to re-register as a sex offender, second offense.²²⁸ Bailey argued that Virginia Code section 18.2-472.1 is unconstitutional because it infringed on his First Amendment rights.²²⁹ Section 18.2-472.1 requires a sex offender to comply with section 9.1-903, which requires, in part, that a sex offender provide law enforcement with the sex offender’s identifying electronic information, such as an e-mail address or screen name.²³⁰ Bailey failed to do so and admitted to having a Facebook account.²³¹ The Court of Appeals of Virginia determined that the statute did not unduly infringe on his First Amendment rights because the statute merely required that the sex offender provide law enforcement with electronic identifying information; the statute did not require that the sex offender report the content of postings.²³²

T. *Venue*

In *Tanner v. Commonwealth*, the Court of Appeals of Virginia dealt with the venue for an obstruction of justice conviction and whether or not an attempted crime could serve as the underlying felony for obstruction of justice.²³³ Tanner was arrested while

225. *Id.* at 62–63, 833 S.E.2d at 914–15.

226. *Id.* at 62–63, 833 S.E.2d at 915.

227. *Id.* at 63, 833 S.E.2d at 915.

228. 70 Va. App. 634, 636, 830 S.E.2d 62, 63 (2019).

229. *Id.* at 636, 830 S.E.2d at 63; VA. CODE ANN. § 18.2-472.1 (Cum. Supp. 2021).

230. *Bailey*, 70 Va. App. at 637, 830 S.E.2d at 63; § 9.1-903 (Cum. Supp. 2021).

231. 70 Va. App. at 637–38, 830 S.E.2d at 64.

232. *Id.* at 644–45, 830 S.E.2d at 67–68.

233. 72 Va. App. 86, 92, 841 S.E.2d 377, 380 (2020).

attempting to burn down the victim's residence and later called the victim and threatened her if she participated in the trial.²³⁴ Tanner was convicted of attempted arson and felony obstruction of justice.²³⁵

On appeal, he argued that the evidence was insufficient to establish venue for the obstruction offense because there was no evidence of where the appellant or the victim was when the phone call took place.²³⁶ The Court rejected this argument because the appellant's phone call was an attempt to prevent the witness from appearing, and therefore it was an attempt to "obstruct or impede the administration of justice in [the] court" where he was to be tried, which is sufficient to satisfy venue.²³⁷ The Court also rejected the appellant's contention that he could not be convicted of obstruction because no harm occurred in the jurisdiction as the witness appeared and testified against him.²³⁸ The Court held that because Virginia Code section 18.2-460 proscribes *attempts* to obstruct justice, the crime was complete when the appellant attempted to intimidate the witness, and no actual harm was necessary.²³⁹

In *Bryant v. Commonwealth*, the Court of Appeals of Virginia considered whether the Arlington County Circuit Court had subject matter jurisdiction and venue over a credit card theft charge under Virginia Code section 18.2-192 when there was no evidence that the defendant had stolen the credit cards in Arlington County.²⁴⁰ The Court explained that the "General Assembly [via section 17.1-513] has granted the circuit courts subject matter jurisdiction over the specific class of cases involving the prosecution of felonious crimes . . . which unquestionably includes the prosecution of felony credit card theft."²⁴¹ The Court also held that the trial court had venue because section 18.2-198.1 specifies that a court has venue "where a credit card number is used, is attempted to be used, or is possessed with intent to violate [sections] 18.2-193, 18.2-195, or 18.2-197," and the appellant had possessed stolen credit

234. *Id.* at 92–93, 841 S.E.2d at 380.

235. *Id.* at 93, 841 S.E.2d at 381.

236. *Id.* at 94, 96, 841 S.E.2d at 381–82.

237. *Id.* at 96–97, 841 S.E.2d at 382.

238. *Id.* at 97, 841 S.E.2d at 382.

239. *Id.* at 94, 97, 841 S.E.2d at 381–82; VA. CODE ANN. § 18.2-460 (Cum. Supp. 2021).

240. 70 Va. App. 697, 707–08, 832 S.E.2d 48, 53 (2019); § 18.2-192 (Repl. Vol. 2014).

241. *Bryant*, 70 Va. App. at 709, 832 S.E.2d at 54; § 17.1-513 (Cum. Supp. 2021).

cards with the intent to commit credit card fraud in Arlington County.²⁴²

U. *Verdicts*

In *Kenner v. Commonwealth*, the Supreme Court of Virginia determined that a motion to poll the jury as to the verdict was untimely when Kenner moved to poll the jury at the conclusion of arguments during the sentencing phase.²⁴³ The Court concluded that the proper time to have the jury polled as to the verdict, pursuant to Rule 3A:17, is when the verdict is returned.²⁴⁴

V. *Witnesses*

In *Palmer v. Commonwealth*, Palmer was convicted of aggravated malicious wounding because he stabbed and slashed his wife fourteen times.²⁴⁵ At trial, the Commonwealth called the wife to the stand, and she invoked her Fifth Amendment right against self-incrimination.²⁴⁶ The prosecutor noted that the wife had pending charges against her for child neglect, and a prosecutor and city attorney involved in that case were present to observe her testimony.²⁴⁷ The Virginia Beach City Circuit Court found that the wife was in legal peril and could legitimately invoke the Fifth Amendment.²⁴⁸ The Commonwealth then had the wife declared unavailable and introduced her testimony from the preliminary hearing, over Palmer's objection.²⁴⁹ On appeal, Palmer challenged the wife's invocation of her Fifth Amendment rights and the Commonwealth's introduction of her prior testimony.²⁵⁰ The Court of Appeals of Virginia determined that the wife's invocation was legitimate because of her pending charges and the presence of interested parties observing her testimony; as to the use of the prior

242. *Bryant*, 70 Va. App. 713–14, 832 S.E.2d at 56–57; §§ 18.2-198.1, -193, -195, -197 (Repl. Vol. 2014 & Cum. Supp. 2021).

243. 299 Va. 414, 428–29, 854 S.E.2d 493, 500–01 (2021).

244. *Id.* at 430, 854 S.E.2d at 501–02; VA. SUP. CT. R. 3A:17 (Repl. Vol. 2021).

245. 71 Va. App. 225, 228, 231, 835 S.E.2d 80, 82–83 (2019).

246. *Id.* at 228–30, 835 S.E.2d at 82–83.

247. *Id.* at 229–30, 835 S.E.2d at 82–83.

248. *Id.* at 230, 835 S.E.2d at 83.

249. *Id.* at 230–31, 835 S.E.2d at 83.

250. *Id.* at 232, 835 S.E.2d at 84.

testimony, the court of appeals determined that this was proper because the witness was unavailable.²⁵¹

II. CRIMINAL LAW

A. *Abduction*

In *Boyd v. Commonwealth*, the Court of Appeals of Virginia affirmed a parental abduction case on the issue of sufficiency of the evidence establishing wrongful conduct.²⁵² It applied the plain meaning of the statute when it defined “wrongful” as “unlawful or contrary to the law.”²⁵³ The Court found the appellant “acted in direct contravention of the . . . custody order,” and therefore acted wrongfully.²⁵⁴

B. *Animal Cruelty*

In *Blankenship v. Commonwealth*, Blankenship alleged that the evidence was insufficient to support his conviction for animal cruelty because there was insufficient evidence to show that he “willfully inflict[ed] inhumane injury or pain” on a police dog because there was no evidence the dog experienced pain and the appellant’s actions were necessary to keep him from being bitten.²⁵⁵ The court of appeals found that there was sufficient evidence of pain, as the dog hesitated after being struck and kicked by the appellant, which the officers testified was not typical of him, and the dog’s veterinarian testified that the dog suffered a digestive injury.²⁵⁶

C. *Assault*

In *Lopez v. Commonwealth*, the Court of Appeals of Virginia found that the evidence was sufficient to support the assault and battery of a law enforcement officer, despite Lopez’s argument that the officer initiated the conduct, not Lopez.²⁵⁷ The Court found that

251. *Id.* at 233–36, 835 S.E.2d at 84–86.

252. 72 Va. App. 274, 844 S.E.2d 425 (2020).

253. *Id.* at 280, 844 S.E.2d at 428.

254. *Id.* at 281, 844 S.E.2d at 429.

255. 71 Va. App. 608, 624, 838 S.E.2d 568, 575 (2020).

256. *Id.* at 624–25, 838 S.E.2d at 575–76.

257. 73 Va. App. 70, 83, 854 S.E.2d 660, 666–67 (2021).

there was evidence in the record of several instances of Lopez touching the officer in an offensive manner, such as shoving the officer's chest and face and grabbing the officer's head and shoulders.²⁵⁸ Thus, the Chesapeake City Circuit Court could disbelieve Lopez's self-serving testimony and conclude that the Commonwealth's witnesses were more credible.²⁵⁹

D. *Burglary*

In *Pooler v. Commonwealth*, the court of appeals affirmed Pooler's convictions for burglary and assault and battery.²⁶⁰ The appellant was romantically involved with the victim and occasionally stayed at the victim's residence, although she did not have permission to be there when the victim was not there.²⁶¹ The appellant also kept some personal items in the victim's home, had a key, and assisted in paying utility bills.²⁶² On the evening of the offense, the appellant had not been invited to the victim's residence; however, she arrived there with an accomplice, kicked open the front door, and confronted the victim and another woman.²⁶³ The court of appeals determined that the appellant had no property interest in the residence.²⁶⁴ While she occasionally spent the night there, she had no right to occupy; accordingly, the evidence was sufficient to demonstrate that it belonged to another.²⁶⁵ The Court also found that Pooler was not invited; the appellant's entry was not permitted and was thus a "breaking."²⁶⁶

E. *Cigarette Trafficking*

In *Jiddou v. Commonwealth*, the Court of Appeals of Virginia affirmed Jiddou's convictions of two counts of fraudulently purchasing cigarettes, three counts of possessing with the intent to distribute tax-paid contraband cigarettes, and two counts of money

258. *Id.* at 83, 854 S.E.2d at 667.

259. *Id.* at 83, 854 S.E.2d at 667.

260. *Id.* at 219, 834 S.E.2d at 532.

261. 71 Va. App. 214, 218, 834 S.E.2d 530, 532 (2019).

262. *Id.* at 218, 834 S.E.2d at 532.

263. *Id.* at 218–19, 834 S.E.2d at 532.

264. *Id.* at 222, 834 S.E.2d at 534.

265. *Id.* at 222, 834 S.E.2d at 534.

266. *Id.* at 224, 834 S.E.2d at 535.

laundering.²⁶⁷ The evidence demonstrated that on three separate occasions, Jiddou purchased large quantities of cigarettes from a Sam's Club using a defunct retail business license, which enabled him to make the purchases without paying sales tax.²⁶⁸ On appeal, Jiddou argued that the business' ST-10 form, the exemption to pay sales tax, was still valid because it had not been revoked in writing by the Department of Taxation.²⁶⁹ The court of appeals determined, however, that the ST-10 form had expired because of the operation of law; the business' ST-4 form, its certificate of registration, had expired when Jiddou sold the business approximately two years before the illegal purchases.²⁷⁰

F. *Contributing to the Delinquency of a Minor*

In *Spell v. Commonwealth*, the court of appeals held that the evidence was insufficient to support the appellant's conviction of contributing to the delinquency of a minor.²⁷¹ The evidence at trial established that the appellant was late picking up her daughter from school, appeared drowsy, and drove poorly on the way home, weaving into the other lane of traffic and rear-ending another car.²⁷² The daughter testified that she was "really scared" and called 911 from the back of the vehicle.²⁷³ While the daughter was on the phone with police, the appellant arrived at her house.²⁷⁴ When deputies arrived several minutes later, they conducted field sobriety tests on the appellant, some of which she passed and others she failed.²⁷⁵ The deputies placed her under arrest, and a subsequent test of her blood was negative for alcohol but did show the presence of the prescription drug Lorazepam at levels consistent with a minimum therapeutic dose to treat anxiety.²⁷⁶ The court of appeals held that, although Virginia Code section 18.2-371 allows for four theories regarding the condition of a child to support a conviction under the section, the court only instructed the jury as to

267. 71 Va. App. 353, 358–59, 836 S.E.2d 700, 702 (2019).

268. *Id.* at 360–64, 836 S.E.2d at 703–05.

269. *Id.* at 364, 836 S.E.2d at 705.

270. *Id.* at 366–67, 836 S.E.2d at 706–07.

271. 72 Va. App. 629, 631, 851 S.E.2d 83, 84 (2020).

272. *Id.* at 631–32, 851 S.E.2d at 84–85.

273. *Id.* at 632, 851 S.E.2d at 85.

274. *Id.* at 632, 851 S.E.2d at 85.

275. *Id.* at 632, 851 S.E.2d at 85.

276. *Id.* at 632, 851 S.E.2d at 85.

the “child in need of services” theory.²⁷⁷ Section 16.1-228 requires the Commonwealth to prove three elements to show a “child in need of services:”

- (i) The conduct complained of must present a clear and substantial danger to the child’s life or health or to the life and health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.²⁷⁸

The appellate court concluded that there was insufficient evidence that the daughter was in need of treatment or that the Stafford County Circuit Court’s intervention was necessary.²⁷⁹

G. *Disarming a Police Officer*

In *Lopez v. Commonwealth*, the court of appeals found the evidence sufficient to support Lopez’s conviction for disarming a law enforcement officer, as Lopez’s actions showed more than just an attempt to retreat and avoid the officers; rather, Lopez engaged in combat with the officer and made threatening statements which allowed the trial court to disbelieve Lopez’s argument that he merely was attempting to retreat from the officers.²⁸⁰

H. *Drug Offenses*

In *Lambert v. Commonwealth*, the Supreme Court of Virginia considered whether the evidence was sufficient to support the finding that the defendant had self-administered intoxicants that impaired his ability to drive safely and upheld the conviction of aggravated involuntary manslaughter.²⁸¹ The Court explained that the “evidence concerning the presence of intoxicants in [the defendant’s] blood, sufficient to impair his ability to drive safely, was undisputed.”²⁸² Additionally, the Court found that Lambert self-administered the drugs when he received methadone from his voluntary participation in a methadone clinic.²⁸³

277. *Id.* at 635, 851 S.E.2d at 86; VA. CODE ANN. § 18.2-371 (Cum. Supp. 2021).

278. *Spell*, 72 Va. App. at 635–36, 851 S.E.2d at 86; § 16.1-228 (Cum. Supp. 2021).

279. *Spell*, 72 Va. App. at 637, 851 S.E.2d at 87.

280. 73 Va. App. 70, 82–83, 854 S.E.2d at 666–67 (2021).

281. 298 Va. 510, 511–12, 840 S.E.2d 326, 326–27 (2020).

282. *Id.* at 515, 840 S.E.2d at 328.

283. *Id.* at 515–16, 840 S.E.2d at 328–29.

In *Bagley v. Commonwealth*, the Court of Appeals of Virginia determined that the evidence was sufficient to support the conviction for possession with intent to distribute a Schedule I or II substance because the appellant's status as the driver of the car, his proximity to the drugs under the driver seat and in the driver-side door jamb, his furtive movements toward the location where the drugs were found immediately upon the arrival of the police, and his attempt to leave the car as quickly as he could when he saw the officers allowed a reasonable factfinder to conclude beyond a reasonable doubt that the appellant constructively possessed the drugs and thus was guilty of the charged offense.²⁸⁴

In *Yerling v. Commonwealth*, the Court of Appeals of Virginia overturned the appellant's conviction for possession of oxycodone because there was insufficient evidence that he was aware of the presence and character of the drug.²⁸⁵ Viewing the facts in the light most favorable to the Commonwealth, Yerling was pulled over for speeding.²⁸⁶ When the police officer approached the driver's side, he noticed an odor of marijuana and that Yerling was breathing heavy and almost sweating.²⁸⁷ During the search, a police officer discovered a small corner baggie of marijuana in the console and a pill, which later was confirmed to be oxycodone, also in the console inside a balled up sheet of notebook paper.²⁸⁸ The Court explained that even if Yerling was aware of the presence of the marijuana based on its scent, there was no evidence he was aware of the oxycodone.²⁸⁹ Additionally, there was no evidence establishing that Yerling knew the nature of the pill because it merely had 'K-56' on it, and even the police officer had to call poison control to try to determine the nature of the pill.²⁹⁰

I. *Firearms Offenses*

The Supreme Court of Virginia affirmed the decision of the Court of Appeals of Virginia in a case of first impression in

284. 73 Va. App. 1, 28–29, 854 S.E.2d 177, 190 (2021).

285. 71 Va. App. 527, 530–31, 838 S.E.2d 66, 67–68 (2020).

286. *Id.* at 530, 838 S.E.2d at 67–68.

287. *Id.* at 531, 838 S.E.2d at 68.

288. *Id.* at 531, 838 S.E.2d at 68.

289. *Id.* at 534, 838 S.E.2d at 69.

290. *Id.* at 535, 838 S.E.2d at 70.

Commonwealth v. Groffel.²⁹¹ At the time of his arrest, Groffel had a revolver strapped to his ankle and he was subject to five different protective orders.²⁹² While in jail, he called a neighbor and asked him to sell some property Groffel kept in a shed.²⁹³ The neighbor located an AK-47 assault rifle, a 12-gauge shotgun, ammunition for those weapons, and ammunition for a “30-30” rifle in the shed.²⁹⁴ Groffel was convicted of five counts of transporting a firearm while subject to a protective order and two counts of possessing a firearm or ammunition after having previously been convicted of a felony.²⁹⁵

Groffel appealed, seeking to reverse four of his convictions for transporting a firearm while subject to a protective order and one of his convictions for possession of a firearm or ammunition after having previously been convicted of a felony; he argued that the multiple convictions violated the Double Jeopardy Clause.²⁹⁶ The Court of Appeals of Virginia affirmed the multiple convictions for transporting a firearm while subject to a protective order, determining that the gravamen of Virginia Code section 18.2-308.1:4(A) was the protection of an individual covered by a protective order.²⁹⁷ Accordingly, the single act of transporting the revolver while subject to five different protective orders resulted in five different convictions.²⁹⁸ The court of appeals reversed, however, concerning the possession of a firearm or ammunition; the Court concluded that the gravamen of section 18.2-308.2 was the act of possession.²⁹⁹ Accordingly, even if a felon possesses 100 guns at the same time, they may only be convicted of one count of section 18.2-308.2.³⁰⁰

In *Williams v. Commonwealth*, the Court of Appeals of Virginia determined that the evidence was sufficient to sustain Williams’s conviction for possession of a stolen gun.³⁰¹ The appellate court determined that Williams’s hypotheses of innocence did not equate to

291. 299 Va. 271, 271–72, 849 S.E.2d 905, 905 (2020).

292. *Groffel v. Commonwealth*, 70 Va. App. 681, 685, 831 S.E.2d 503, 505 (2019).

293. *Id.* at 685, 831 S.E.2d at 505.

294. *Id.* at 685, 831 S.E.2d at 505–06.

295. *Id.* at 686, 831 S.E.2d at 506.

296. *Id.* at 684–85, 831 S.E.2d at 505.

297. *Id.* at 688–92, 831 S.E.2d at 507–09; VA. CODE ANN. § 18.2-308.1:4(A) (Cum. Supp. 2021).

298. *Groffel*, 70 Va. App. at 692, 831 S.E.2d at 509.

299. *Id.* at 692–95, 831 S.E.2d at 509–10; § 18.2-308.2 (Cum. Supp. 2021).

300. *Groffel*, 70 Va. App. at 693–94, 831 S.E.2d at 509–10.

301. 71 Va. App. at 462, 484–86, 837 S.E.2d 91, 102–03 (2020).

innocence, and the jury was entitled to discredit Williams's theories.³⁰² Moreover, there was evidence that Williams was evasive in answering the officer's questions and initially refused to get out of the car.³⁰³ Additionally, when informed that the gun was stolen, Williams did not seem surprised, would not identify the person he bought it from, and stated that the charges would get "lost in court."³⁰⁴

In *Murray v. Commonwealth*, Murray alleged that the evidence was insufficient to show that she knowingly and intentionally possessed the firearm.³⁰⁵ The location of the gun, the lack of other passengers in the car, the appellant's flight, the magazine dropped as she fled, and her statements to police that she knew the firearm was in the vehicle and was trying to return it provided ample evidence to prove knowing and intentional possession.³⁰⁶ Accordingly, the appellant's conviction was affirmed.³⁰⁷

J. *Fraud*

In *Sarka v. Commonwealth*, the Court of Appeals of Virginia held that the evidence was sufficient to convict the appellant of fraudulently failing to return leased property, in violation of Virginia Code section 18.2-118.³⁰⁸ Applying Virginia Commercial Code section 8.2A-202, the Court turned to the express terms of the rental agreement over the course of performance and determined the expiration date was expressly stated in the agreement.³⁰⁹ The Court also noted "that written notice of default is not required for a conviction under [Virginia] Code [section] 18.2-118," and there was ample circumstantial evidence of the appellant's intent to defraud."³¹⁰

302. *Id.* at 485–86, 837 S.E.2d at 102–03.

303. *Id.* at 486, 837 S.E.2d at 103.

304. *Id.* at 486, 837 S.E.2d at 103.

305. 71 Va. App. 449, 461, 837 S.E.2d 85, 91 (2020).

306. *Id.* at 461, 837 S.E.2d at 91.

307. *Id.* at 461, 837 S.E.2d at 91.

308. 73 Va. App. 56, 69, 854 S.E.2d 204, 210 (2021); VA. CODE ANN. § 18.2-118 (Repl. Vol. 2014).

309. *Sarka*, 73 Va. App. at 64–66, 854 S.E.2d at 208–09; § 8.2A-202 (Repl. Vol. 2015).

310. *Sarka*, 73 Va. App. at 67, 854 S.E.2d at 209 (explaining that the letter sent to the appellant constituted prima facie evidence of intent to defraud per § 18.2-118 (Cum. Supp. 2021)).

In *Brewer v. Commonwealth*, the Court of Appeals of Virginia held that “the plain language of [Virginia] Code [section] 18.2-152.3 supports the conclusion that the appellant’s iPhone, a cellular smart phone, fell within the statutory definition of computer” as defined by the statute.³¹¹ The appellant had used his iPhone to access the Internet and used a mobile app to transfer money from one bank account to the other.³¹²

K. *Malicious Wounding*

In *Palmer v. Commonwealth*, Palmer argued that the evidence was insufficient to sustain his conviction for aggravated malicious wounding because he acted in the heat of passion such that the element of malice was negated.³¹³ The Court of Appeals of Virginia disagreed, noting that the argument between Palmer and his wife could not constitute heat of passion.³¹⁴ The Court noted, moreover, that there was ample evidence that Palmer acted with malice: he returned an hour or two after the argument carrying two knives, which are deadly weapons, and he stabbed the wife fourteen times.³¹⁵ Additionally, when the couple’s young daughter attempted to intervene, Palmer threatened to kill the wife if the daughter sought help.³¹⁶

In *Goodwin v. Commonwealth*, Goodwin argued that the evidence was insufficient to support his conviction for malicious wounding, as his participation was minimal and did not establish his guilt under a concert of action theory.³¹⁷ The court of appeals rejected both of these contentions, as the evidence, including a video, established that the appellant kicked the victim at least four times and made contact with the victim’s left arm with his shield.³¹⁸ Thus, the evidence was clearly sufficient to show that the appellant’s participation was not minimal and was not part of a concert of action, but that the appellant actually struck the victim,

311. 71 Va. App. 585, 596, 838 S.E.2d 557, 562 (2020); § 18.2-152.3 (Cum. Supp. 2021).

312. *Brewer*, 71 Va. App. at 595, 838 S.E.2d at 561.

313. 71 Va. App. 225, 236, 835 S.E.2d 80, 86 (2019).

314. *Id.* at 237–38, 835 S.E.2d at 86–87.

315. *Id.* at 237–38, 835 S.E.2d at 86–87.

316. *Id.* at 238, 835 S.E.2d at 87.

317. 71 Va. App. 125, 145, 834 S.E.2d 487, 496 (2019).

318. *Id.* at 148–49, 834 S.E.2d at 498.

who suffered a fractured left arm.³¹⁹ Accordingly, the Court affirmed the appellant's conviction.³²⁰

L. *Obstruction of Justice*

In *Tanner v. Commonwealth*, Tanner contended that the felony obstruction of justice statute proscribes obstructive acts designed to interfere with a prosecution for an offense or conspiracy to commit an offense but does not cover obstruction related to an *attempted* crime; thus, the Charles City County Circuit Court's conviction of him for obstruction related to an attempted arson was erroneous.³²¹ The court of appeals interpreted Virginia Code sections 18.2-77, 18.2-460, and 17.1-805 and found that as section 18.2-460 incorporated "any violent felony offense" listed in section 17.1-805, it thereby incorporated an attempt to commit a violent felony offense, as section 17.1-805 expressly includes "any conspiracy or attempt" in its definition of "violent felony offenses."³²² Accordingly, the court affirmed the appellant's convictions.³²³

M. *Protective Orders*

In *Green v. Commonwealth*, Green argued that the evidence was insufficient to support his conviction for violating a protective order.³²⁴ The evidence at trial established that, after a burglary, the appellant posted a message on Twitter stating "Someone tell my BM she was a bird for me," meaning, roughly, someone tell my "baby mama" that she was "nothing" or a "ho."³²⁵ The appellant was prohibited from contacting his "baby mama" by the protective order, and on appeal, he alleged that this message did not amount to contacting her, as it was posted on a public forum and not directly sent to her.³²⁶ The court of appeals held that the post was not a generic comment, but rather intentionally directed another person to contact the victim and relay the message; thus, the

319. *Id.* at 148–49, 834 S.E.2d at 498.

320. *Id.* at 149–50, 834 S.E.2d at 498.

321. 72 Va. App. 86, 98, 841 S.E.2d 377, 383 (2020).

322. *Id.* at 101–03, 841 S.E.2d at 385; VA. CODE ANN. §§ 18.2-77, -460, 17.1-805 (Repl. Vol. 2014 & Cum. Supp. 2021).

323. *Tanner*, 72 Va. App. at 103, 841 S.E.2d at 385.

324. 72 Va. App. 193, 201, 843 S.E.2d 389, 393 (2020).

325. *Id.* at 198, 843 S.E.2d at 392.

326. *Id.* at 201–02, 843 S.E.2d at 393–94.

communication was directed at the victim, and, therefore, the appellant was contacting the victim, albeit indirectly.³²⁷ Accordingly, the court of appeals affirmed both of the appellant's convictions.³²⁸

N. *Resisting Arrest*

In *Lopez v. Commonwealth*, Lopez argued that the Chesapeake City Circuit Court erred when it convicted him of escaping from custody because there was no evidence that Lopez was charged with a criminal offense at the point of his initial arrest.³²⁹ The facts established that Lopez was subject to a capias for his arrest.³³⁰ The Court of Appeals of Virginia determined that the capias at issue was for a charge of criminal contempt, and that the matter underlying the capias was a failure to comply with conditions arising out of an assault and battery charge, a criminal offense.³³¹ The Court also noted that title 18.2 is titled "Crimes and Offenses Generally," and that chapter 10, where the code section is located, is titled "Crimes Against the Administration of Justice."³³² Accordingly, the Court affirmed the conviction and found that "on a charge of criminal offense" in section 18.2-478 includes a capias for contempt of court, provided the capias specifies a criminal statute.³³³

O. *Self-Defense*

In *Jones v. Commonwealth*, the Court of Appeals of Virginia addressed Jones' appeal of his convictions of first-degree murder and use of a firearm in the commission of a felony.³³⁴ Jones challenged the Portsmouth City Circuit Court's ruling that there was no overt act sufficient to justify a self-defense claim.³³⁵ The court of appeals affirmed the trial court's ruling, stating that "nothing . . . sufficiently even minimally established the overt act requirement."³³⁶ The evidence in this case established that the victim had looked

327. *Id.* at 203–04, 843 S.E.2d at 394–95.

328. *Id.* at 205, 843 S.E.2d at 395.

329. 73 Va. App. 70, 73, 854 S.E.2d 660, 662 (2021).

330. *Id.* at 74, 854 S.E.2d at 662.

331. *Id.* at 78–79, 854 S.E.2d at 664–65.

332. *Id.* at 78–79, 854 S.E.2d at 664–65; VA. CODE ANN. § 18.2-10 (Repl. Vol. 2014).

333. *Lopez*, 73 Va. App. at 79, 854 S.E.2d at 665; § 18.2-478 (Repl. Vol. 2014).

334. 71 Va. App. 70–80, 833 S.E.2d 918, 923 (2019).

335. *Id.* at 86, 833 S.E.2d at 925–96.

336. *Id.* at 87, 822 S.E.2d at 926.

entirely at his cell phone until he was shot and never reached for his waistband.³³⁷ Additionally, the Court highlighted that “it appears from the video that [the victim] was not even aware of Jones’s presence until Jones opened fire on him.”³³⁸

P. *Sex Offenses*

In *Ferguson v. Commonwealth*, Ferguson entered a conditional guilty plea to a violation of Virginia Code section 18.2-366 for having sexual intercourse with his eighteen-year-old stepdaughter, reserving the right to appeal the issue of the constitutionality of section 18.2-366.³³⁹ The Court expressed some doubts as to whether the statute actually applied to intercourse between an adult stepchild and the stepparent, but assumed without deciding that it did.³⁴⁰ Assuming that the statute did criminalize the appellant’s conduct, the Court found that it was not unconstitutional, as the concerns outlined in *Lawrence v. Texas*,³⁴¹ relationships where one party might be injured or coerced, or where consent might not be easily refused, were implicated by a relationship between a stepparent and stepchild.³⁴² Accordingly, the state had a legitimate interest in criminalizing them, and the appellant’s constitutional challenge failed.³⁴³

In *Alvarez Saucedo v. Commonwealth*, the court of appeals held that there was sufficient evidence to uphold the sodomy conviction because sodomy by cunnilingus merely requires penetration of the vulva, and the victim testified the defendant licked around her vagina.³⁴⁴

Q. *Trespassing*

In *Green v. Commonwealth*, Green argued that his conviction for common-law trespass precluded his conviction for burglary arising out of the same events, as the burglary statute specifically excludes

337. *Id.* at 87, 822 S.E.2d at 926.

338. *Id.* at 87, 822 S.E.2d at 926.

339. 71 Va. App. 546, 549–50, 838 S.E.2d 75, 77 (2020); VA. CODE ANN. § 18.2-366 (Cum. Supp. 2021).

340. *Ferguson*, 71 Va. App. at 553–57, 838 S.E.2d at 79–81.

341. 539 U.S. 558 (2003).

342. *Ferguson*, 71 Va. App. at 558–60, 838 S.E.2d at 81–82.

343. *Id.* at 561, 838 S.E.2d at 83.

344. 71 Va. App. at 48–49, 833 S.E.2d at 908.

trespass from constituting a basis for burglary.³⁴⁵ The Court of Appeals of Virginia rejected this argument, as the evidence clearly showed that the appellant entered the residence with the intent to commit other misdemeanors in addition to the trespass; in other words, the fact that the appellant intended to commit a trespass during his entry does not preclude his intent to commit another misdemeanor and his conviction for that.³⁴⁶

R. *Unauthorized Use*

In *Otey v. Commonwealth*, the Court of Appeals of Virginia determined that there was sufficient evidence to support Otey's conviction for unauthorized use of a motor vehicle.³⁴⁷ The owner of the vehicle gave it to Otey to repair the brake lines; there was no written agreement concerning the repairs.³⁴⁸ When the owner was unable to contact Otey, he reported the vehicle as stolen.³⁴⁹ Eventually, the owner recovered the vehicle and observed new damage to the rear bumper and frame.³⁵⁰ Otey argued that the evidence was insufficient to support his conviction because the owner did not place any time limitations on his use of the vehicle.³⁵¹ The court of appeals disagreed, ruling that Otey exceeded the scope of the owner's consent when he used the vehicle to tow or attempt to tow Otey's personal vehicle.³⁵² Moreover, Otey admitted he drove the vehicle more than he needed to test the repairs.³⁵³ Additionally, there was sufficient evidence of the value of the vehicle because the owner testified as to its value without objection.³⁵⁴

345. 72 Va. App. at 196, 843 S.E.2d at 391.

346. *Id.* at 201, 843 S.E.2d at 393.

347. 71 Va. App. 792, 799–800, 839 S.E.2d 921, 925 (2020).

348. *Id.* at 795, 839 S.E.2d at 923.

349. *Id.* at 795, 839 S.E.2d at 923.

350. *Id.* at 796, 839 S.E.2d at 923.

351. *Id.* at 797–98, 839 S.E.2d at 924.

352. *Id.* at 798–800, 839 S.E.2d at 924–25.

353. *Id.* at 798–800, 839 S.E.2d at 924–25.

354. *Id.* at 800–01, 839 S.E.2d at 925.

III. LEGISLATION

A. *Animal Cruelty*

The General Assembly amended Virginia Code sections 3.2-6511.1 and 3.2-6511.2 by forbidding anyone convicted of a violation of section 3.2-6570 (animal cruelty) from being an owner, director, officer, manager, operator, staff member, or animal caregiver of a pet shop or commercial dog breeder.³⁵⁵ Additionally, the General Assembly now requires a pet shop to obtain a signed statement from the purchaser or adopter that the person has never been convicted of animal cruelty prior to purchasing or adopting a dog.³⁵⁶

B. *Bail*

The General Assembly eliminated the presumption against bail.³⁵⁷ Virginia Code section 19.2-120 will now provide that a defendant shall be admitted to bail, unless there is probable cause to believe that: (1) the defendant will not appear in court; or (2) the defendant poses an unreasonable danger to themselves, family or household members, or the public.³⁵⁸

C. *Commercial Driver's License*

The General Assembly disqualified any person convicted of a felony involving an act or practice of severe forms of trafficking in persons while driving a commercial motor vehicle from holding a commercial driver's license.³⁵⁹

D. *Dangerous Dogs*

The General Assembly amended and added several new sections concerning dangerous dogs.³⁶⁰ For a dog to be adjudicated

355. Act of Mar. 24, 2021, ch. 339, 2021 Va. Acts __, __ (codified as amended at VA. CODE ANN. §§ 3.2-6511.1, -6511.2 (Cum. Supp. 2021)).

356. *Id.* at __.

357. Act of Mar. 24, 2021, ch. 337, 2021 Va. Acts __, __ (codified as amended at §§ 19.2-120, -124 (Cum. Supp. 2021)).

358. *Id.* at __.

359. Act of Mar. 18, 2021, ch. 136, 2021 Va. Acts __, __ (codified as amended at §§ 46.2-341.18, -382, -1702 (Cum. Supp. 2021)).

360. *See* Act of Mar. 31, 2021, ch. 464, 2021 Va. Acts __, __ (codified as amended at

dangerous, the Commonwealth must prove that it killed a companion animal that is a dog or cat, inflicted serious injury on that animal, or directly caused serious injury to a person.³⁶¹ The statute imposes obligations on the owner of a dangerous dog, such as requiring the animal to wear a special identification on its collar, providing documentation that the animal has been spayed or neutered, and registering the dog on the dangerous dog registry.³⁶² The owner of a dangerous dog must notify animal control of new attacks, any change of address, transfer of ownership, or if the dog has gotten loose.³⁶³ The statute also permits condominium associations or homeowners' associations to ban the keeping of dangerous dogs.³⁶⁴ The statute also provides that the owner of a dangerous dog may face penalties for violating the section, including criminal penalties for failing to comply with the statute or if a dangerous dog attacks another companion animal or a person.³⁶⁵

E. *Death Threats*

It is now illegal in Virginia, punishable as a Class 5 felony, for anyone to communicate a threat in writing to another person to kill or do serious bodily injury to another person with the intent to “(i) intimidate a civilian population at large; (ii) influence the conduct or activities of a government, . . . ; or (iii) compel the emergency evacuation . . . of any place of assembly. . . .”³⁶⁶ If the perpetrator is a minor, this crime is punishable as a Class 1 misdemeanor.³⁶⁷

F. *Driving Offenses*

The General Assembly repealed the remaining provisions of the habitual offender law, concerning driving offenses, and requires reinstatement of a person's driver's license if the license was suspended or revoked solely under the Habitual Offender Act.³⁶⁸

§ 3.2-6540, -6542 (Cum. Supp. 2021)).

361. *Id.* at __.

362. *Id.* at __.

363. *Id.* at __.

364. *Id.* at __.

365. *Id.* at __.

366. *See* Act of Mar. 11, 2021, ch. 83, 2021 Va. Acts __, __ (codified as amended at § 18.2-60 (Cum. Supp. 2021)).

367. *Id.* at __.

368. Act of Mar. 31, 2021, ch. 463, 2021 Va. Acts __, __ (codified as amended at §§ 8.01-

The General Assembly amended Virginia Code section 46.2-839 to require drivers of motor vehicles to change lanes when overtaking bicycles, mopeds, and similar vehicles, if the overtaking cannot be completed safely (defined as providing the overtaken conveyance three feet of space) in a single lane.³⁶⁹ The bill also amends section 46.2-905, which currently permits riders of bicycles, scooters, or motorized skateboards to ride two abreast, but requires those riders to go single file if a motor vehicle attempts to overtake them.³⁷⁰ The amendment permits those riders to continue riding two abreast.³⁷¹

G. *Drug Offenses*

The General Assembly amended Virginia Code section 18.2-251.03, which is the safe harbor from prosecution for an individual who reports his or her own or another's overdose.³⁷² The Legislature added to the safe harbor provision those who attempt to provide medical care or the administration of naloxone or other "opioid antagonist."³⁷³

H. *Evidence*

The General Assembly created a new Virginia Code section 19.1-271.6, which permits the introduction of evidence of a defendant's mental condition.³⁷⁴ The statute provides that evidence of a defendant's mental condition at the time of the commission of the offense is relevant and, provided it does not go to an ultimate issue of fact, may be admitted to show that the defendant did not have the intent required to commit the charged offense.³⁷⁵ The General Assembly also amended various other statutes to permit the

9, -407, 16.1-77, -305, 17.1-213, 19.2-389 (Cum. Supp. 2021)).

369. Act of Mar. 31, 2021, ch. 462, 2021 Va. Acts __, __ (codified as amended at §§ 46.2-839, -905 (Cum. Supp. 2021)).

370. *Id.* at __.

371. *Id.* at __.

372. Act of Feb. 25, 2021, ch. 29, 2021 Va. Acts __, __ (codified as amended at § 18.2-251.03 (Cum. Supp. 2021)).

373. *Id.* at __.

374. Act of Apr. 7, 2021, ch. 540, 2021 Va. Acts __, __ (codified as amended at §§ 19.2-120, -163.03, -299, 37.2-808 (Cum. Supp. 2021)).

375. *Id.* at __.

consideration of a defendant's mental condition for other things, such as in bail considerations or in a presentence report.³⁷⁶

I. *Firearms Offenses*

The General Assembly enacted a new Virginia Code section 18.2-283.2, which prohibits the carrying of firearms or explosive material in the Capitol, Capitol Square, any state-owned building, or any office in which state employees regularly work.³⁷⁷ Violation of the statute is punishable as a Class 1 misdemeanor.³⁷⁸

J. *Hate Crimes*

The General Assembly criminalized when a person intentionally gives a false report, causes someone else to give a false report, or summons law enforcement against another person based on that person's race as a Class 6 felony.³⁷⁹

K. *Juvenile Justice*

Under new legislation, juveniles may only be committed to the Department of Juvenile Justice if the juvenile is adjudicated delinquent of a violent juvenile felony and is eleven years of age or older, or is fourteen years of age or older.³⁸⁰ No juvenile younger than eleven years of age may be detained in a secure facility prior to a final order unless he is alleged to have committed a violent felony, in which case he may be detained in an approved foster home, a facility operated by a licensed welfare agency, or another suitable nonsecure detention facility designated by the court and approved by the Department.³⁸¹

376. *Id.* at __.

377. Act of Apr. 7, 2021, ch. 548, 2021 Va. Acts __, __ (codified as amended at § 18.2-283.2 (Cum. Supp. 2021)).

378. *Id.* at __.

379. See Act of Oct. 21, 2020, ch. 22, 2020 Va. Acts __, __ (codified as amended at § 18.2-461 (Cum. Supp. 2021)).

380. See Act of Mar. 12, 2021, ch. 115, 2021 Va. Acts __, __ (codified as amended at §§ 16.1-248.1, -278.7 (Cum. Supp. 2021)).

381. *Id.* at __.

L. *Larceny*

The General Assembly repealed Virginia Code section 18.2-104, which set out punishments for a second or subsequent conviction of larceny.³⁸²

M. *Marijuana Legalization*

In 2021, the General Assembly passed sweeping marijuana legalization reform.³⁸³ Virginia eliminated criminal penalties for simple possession of up to one ounce of marijuana by persons twenty-one years of age or older.³⁸⁴ Possession of more than one ounce but less than one pound of marijuana is punishable by a twenty-five dollar civil penalty.³⁸⁵ Possession of more than one pound of marijuana is an unclassified felony that is punishable by up to ten years in prison.³⁸⁶

Additionally, Virginians can now grow up to four marijuana plants if the plant has a tag with the grower's name, driver's license number, and a notation that states it is for personal use.³⁸⁷ The civil penalty for possession of 5 to 10 plants is \$250 for a first offense, a Class 3 misdemeanor for a second offense, and a Class 2 misdemeanor for a third or subsequent offense.³⁸⁸ The penalty for possession of more than 10 plants but not more than 49 plants is a Class 1 misdemeanor.³⁸⁹ Possession of 49 plants to 100 plants is a Class 6 felony.³⁹⁰ Finally, possession of more than 100 plants is an unclassified felony, punishable by one to ten years in prison and a fine of not more than \$250,000.³⁹¹

382. Act of Mar. 18, 2021, ch. 192, 2021 Va. Acts __, __.

383. See Act of Apr. 7, 2021, ch. 550, 2021 Va. Acts __, __ (codified as amended at §§ 4.1-1100 to -1105, -1302 (Cum. Supp. 2021)).

384. *Id.* at __.

385. *Id.* at __; see also Act of Oct. 13, 2020, ch. 3, 2020 Va. Acts __, __ (codified as amended at § 18.2-250.1 (Cum. Supp. 2021)) (making possession of marijuana violations a pre-payable offense).

386. Act of Apr. 7, 2021, ch. 550, 2021 Va. Acts __, __ (codified as amended at §§ 4.1-1100 to -1105, 1302 (Cum. Supp. 2021)).

387. *Id.* at __.

388. *Id.* at __.

389. *Id.* at __.

390. *Id.* at __.

391. *Id.* at __.

There is no criminal or civil liability for giving up to one ounce of marijuana to another person over the age of twenty-one.³⁹² However, it is a Class 2 misdemeanor to illegally sell, give, or distribute marijuana for a first-time offense and a Class 1 misdemeanor for a second or subsequent offense.³⁹³ It is a Class 1 misdemeanor to illegally sell, give, or distribute marijuana to a person under the age of twenty-one.³⁹⁴

The law also prohibits searches based upon the odor of marijuana.³⁹⁵

N. *Plea Bargaining*

The General Assembly added a new Virginia Code section 19.2-298.02 that permits a criminal defendant and the Commonwealth to enter into an agreement at any time, even after the entry of a conviction order, to defer proceedings and continue the case for final disposition on the agreement of the parties.³⁹⁶ Notably, the new statute provides that a defendant who fulfills the conditions of the agreement waives the right to appeal the entry of a final order.³⁹⁷

O. *Police Reform*

In 2020, the General Assembly passed legislation requiring a law enforcement officer, “while in the performance of [their] official duties,” to intervene if feasible to end or prevent further harm if another officer uses excessive force and to render aid to any person injured as the result of excessive force.³⁹⁸ This statute also requires the officer to report the excessive force incident.³⁹⁹ Any officer who knowingly violates this statute is subject to disciplinary action, including dismissal, demotion, suspension, transfer, or decertification.⁴⁰⁰

392. *Id.* at __.

393. *Id.* at __.

394. *Id.* at __.

395. *Id.* at __.

396. Act of Oct. 21, 2020, ch. 21, 2020 Va. Acts __, __ (codified as amended at § 19.2-298.02 (Cum. Supp. 2021)).

397. *Id.* at __.

398. Act of Oct. 28, 2020, ch. 37, 2020 Va. Acts __, __ (codified as amended at §§ 19.2-83.3 to -83.7 (Cum. Supp. 2021)).

399. *Id.* at __.

400. *Id.* at __.

The General Assembly prohibited the use of neck restraints by police officers during an arrest or detention, unless the use of a neck restraint is “immediately necessary” to protect the law enforcement officer or another person.⁴⁰¹ The Legislature also provides that any law enforcement officer who utilizes a neck restraint outside of the exception is subject to disciplinary action.⁴⁰²

P. *Protective Orders*

The 2021 General Assembly passed one law addressing preliminary child protective orders.⁴⁰³ A violation of a preliminary child protective order is punishable as contempt of court; however, if the violation involved an act or omission that endangered the child’s life or health or resulted in bodily injury, the violation is punishable as a Class 1 misdemeanor.⁴⁰⁴ Additionally, courts are no longer required to enter a permanent family abuse protective order upon a conviction of a violation of a preliminary child protective order.⁴⁰⁵

Q. *Robbery*

The 2021 General Assembly changed the penalties for robbery based on the severity of the offense:

- any person who commits robbery and causes serious bodily injury or death to another person is guilty of a Class 2 felony;
- any person who commits robbery by using or displaying a firearm in a threatening manner is guilty of a Class 3 felony;
- any person who commits robbery by physical force not resulting in serious bodily injury or by displaying or using another deadly weapon is guilty of a Class 5 felony; and
- any person who commits robbery by using threats or intimidation or any other means not involving a deadly weapon is guilty of a Class 6 felony.⁴⁰⁶

401. *Id.* at __.

402. *Id.* at __.

403. *See* Act of Apr. 7, 2021, ch. 529, 2021 Va. Acts __, __ (codified as amended at §§ 16.1-253, -253.2 (Cum. Supp. 2021)).

404. *Id.* at __.

405. *Id.* at __.

406. Act of Apr. 7, 2021, ch. 534, 2021 Va. Acts __, __ (codified as amended at §§ 16.1-269.1, 18.2-58 (Cum. Supp. 2021)).

R. *Role of the Prosecutor*

The General Assembly amended Virginia Code section 19.2-265.6 by adding a new subsection (A), that provides that when the Commonwealth moves to dismiss a charge, with or without prejudice, the court should grant the motion, unless it finds that the motion was made as a result of bribery or bias toward a victim because of the victim's race, religion, gender, disability, gender identity, sexual orientation, color, or national origin.⁴⁰⁷

S. *Sentencing*

As of 2020, Virginia no longer requires mandatory jury sentencing when a defendant or the Commonwealth has elected to proceed with a jury trial.⁴⁰⁸

The General Assembly abolished the death penalty.⁴⁰⁹ Among the provisions of the bill, there is no longer a capital offense in the Virginia Code; capital murder is now referred to as “aggravated murder.”⁴¹⁰ The most severe penalty is now a life sentence without parole.⁴¹¹

The General Assembly modified a circuit court's probation and suspension authority and added a new section 19.2-306.1.⁴¹² Under the new legislation, a circuit court is limited to imposing a period of probation that equals the maximum statutory period for which the defendant may have been originally sentenced.⁴¹³ The same is true if the court suspends a portion of the sentence—that is, the suspended portion can be only as long as the statutory maximum to which the defendant may be sentenced.⁴¹⁴ The new section 19.2-306.1 defines a “technical violation” of a suspended sentence and

407. Act of Oct. 21, ch. 21, 2021 Va. Acts __, __ (codified as amended at § 19.2-265.6 (Cum. Supp. 2021)).

408. See Act of Nov. 5, 2020, ch. 43, 2020 Va. Acts __, __ (codified as amended at §§ 19.2-264.3, -288, -295, -295.1, 19.2-295.3 (Cum. Supp. 2021)).

409. Act of Mar. 24, 2021, ch. 344, 2021 Va. Acts __, __ (codified as amended at §§ 18.2-10, -18 (Cum. Supp. 2021)).

410. *Id.* at __.

411. *Id.* at __.

412. Act of Apr. 7, 2021, ch. 538, 2021 Va. Acts __, __ (codified as amended at §§ 19.2-303, -303.1, -306.1 (Cum. Supp. 2021)).

413. *Id.* at __.

414. *Id.* at __.

limits the discretion of a court in sentencing a defendant for a technical violation.⁴¹⁵

T. *Sexual Offenses*

The General Assembly amended Virginia Code section 18.2-64.2 by adding law enforcement officers to the class of people who can be convicted of a Class 6 felony for having carnal knowledge of a person detained or arrested, an inmate, parolee, probationer, juvenile detainee, or pretrial defendant.⁴¹⁶

The General Assembly created a new chapter which permits victims of sex trafficking crimes to petition for a writ of vacatur.⁴¹⁷ The statute defines “qualifying offense” and provides that anyone convicted of a qualifying offense as a direct result of being “solicited, invited, recruited, encouraged, forced, intimidated, or deceived” by someone else may petition a circuit court for a writ of vacatur of the offense.⁴¹⁸ The statute delineates what a petition should include and the possible responses by the Commonwealth.⁴¹⁹ Any appeals from the circuit court’s decision go to the Supreme Court of Virginia.⁴²⁰ If the petition is granted, then the qualifying offense is expunged.⁴²¹

Along with that, the General Assembly added a new Virginia Code section 18.2-361.1, which provides for victims of sex trafficking to assert an affirmative defense to charges of prostitution or residing in a “bawdy place.”⁴²² A victim of sex trafficking may assert the defense where they were to engage in the offense through force or intimidation, or the offense was committed at the direction of someone else.⁴²³

415. *Id.* at __.

416. Act of Oct. 28, 2020, ch. 26, 2020 Va. Acts __, __ (codified as amended at § 18.2-64.2 (Cum. Supp. 2021)).

417. Act of Apr. 7, 2021, ch. 543, 2021 Va. Acts __, __ (codified as amended at §§ 19.2-327.15, -327.20 (Cum. Supp. 2021)).

418. *Id.* at __.

419. *Id.* at __.

420. *Id.* at __.

421. *Id.* at __.

422. Act of Mar. 24, 2021, ch. 334, 2021 Va. Acts __, __ (codified as amended at § 18.2-361.1 (Cum. Supp. 2021)); § 18.2-347 (Cum. Supp. 2021).

423. *Id.* at __.

U. *Warrants*

The General Assembly outlawed “no-knock” warrants.⁴²⁴ The statute requires law enforcement executing a search warrant to be uniformed and to announce their presence and purpose.⁴²⁵ Additionally, the statute prohibits the execution of search warrants at night, unless law enforcement demonstrates good cause for executing the warrant at night.⁴²⁶ If law enforcement violates this statute, any evidence recovered as a result of the search will be inadmissible.⁴²⁷ The General Assembly later amended this statute to clarify that “daytime” is between the hours of 8:00 AM and 5:00 PM.⁴²⁸ A search warrant may be executed outside of this timeframe if police lawfully entered the place to be searched and remained there continuously, or if a judge or magistrate authorizes the execution of the search warrant for good cause shown.⁴²⁹ The 2021 amendment also requires the executing officer to not only leave the warrant with someone or posted at the place to be searched, but also the affidavit.⁴³⁰ After 5:00 PM, the law enforcement officer may apply for a warrant from a magistrate and does not need to make reasonable efforts to locate a judge, if circumstances call for the execution of the warrant after 5:00 PM.⁴³¹

424. Act of Oct. 28, 2020, ch. 31, 2020 Va. Acts __, __ (codified as amended at § 19.2-56 (Cum. Supp. 2021)).

425. *Id.* at __.

426. *Id.* at __.

427. *Id.* at __.

428. Act of Mar. 1, 2021, ch. 34, 2021 Va. Acts __, __ (codified as amended at § 19.2-56 (Cum. Supp. 2021)).

429. *Id.* at __.

430. *Id.* at __.

431. *Id.* at __.