CRIMINAL LAW AND PROCEDURE

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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. APPELLATE DECISIONS

A. *Speedy Trial*

In *McCalla v. Commonwealth*, the Court of Appeals of Virginia affirmed the trial court's ruling that McCalla had not suffered a statutory speedy trial violation.[1] McCalla was indicted for unlawful wounding, and then, six months later, he was indicted for malicious wounding.[2] The following month, McCalla filed a speedy trial motion, alleging that his indictments originated from the same offense and that his speedy trial period, which ran from the first indictment, had elapsed.[3] The trial court later denied McCalla's motion to dismiss and granted the Commonwealth's motion to nolle prosse the unlawful wounding charge.[4] The court of appeals subsequently clarified that the malicious wounding and unlawful wounding charges were the same offense, for purposes of Virginia's speedy trial statute, because they arose from the "same conduct and the same transaction, incident, events, or set of facts."[5] After computing any tolling, the court found that the Commonwealth obtained the second indictment before the speedy trial period for the first indictment expired.[6] Accordingly, the second indictment reset the speedy trial clock.[7]

1. 87 Va. App. 564, 584, 928 S.E.2d 901, 910 (2026).
2. *Id.* at 569–70, 928 S.E.2d at 903.
3. *Id.* at 570, 928 S.E.2d at 903.
4. *Id.*
5. *Id.* at 574, 928 S.E.2d at 905 (internal quotation marks omitted).
6. *Id.* at 582, 928 S.E.2d at 909.
7. *Id.*

B. *Jury Selection & Instructions*

1. Voir dire

In *Burton v. Commonwealth*, the Court of Appeals of Virginia reversed Burton's conviction for possession of a firearm by a convicted felon and remanded the matter for a new trial because the trial court erred in failing to strike a juror for cause.[8] During voir dire, one of the prospective jurors repeatedly agreed that he could not be fair to both parties, admitted a "slight bias" against convicted felons, and stated that he had "strong feelings about the illegal possession of firearms."[9] The trial court interjected and asked, "[d]o you agree with following the Court's instructions in reaching a verdict?" and the juror responded, "I do."[10] After considering the totality of the circumstances, the court of appeals found that this one leading question from the trial court was insufficient to rehabilitate the juror.[11]

In *Rodriguez v. Commonwealth*, the Court of Appeals of Virginia held that the trial court erred when it denied Rodriguez's motion to strike a juror for cause.[12] Rodriguez was charged with various felony sexual offenses involving a child victim, and the prosecutor planned to present evidence of Rodriguez's similar prior convictions at trial.[13] During voir dire, one of the jurors agreed "that she believed that a person is more likely to be guilty of an offense if he has been convicted of similar offenses before."[14] The trial court "asked whether her knowledge of Rodriguez's prior crimes would be so overwhelming in [her] thought process that [she] couldn't fairly and impartially listen to the facts and the evidence and make a decision based upon the facts and the evidence."[15] The juror responded, "It would be very hard, yes."[16] The court of appeals held that the juror's responses demonstrated that she was likely to convict Rodriguez based solely on his criminal history.[17] The court of

8. 85 Va. App. 408, 414, 917 S.E.2d 575, 577 (2025).
9. *Id.* at 415–16, 917 S.E.2d at 578–79 (internal quotation marks omitted).
10. *Id.* at 426, 917 S.E.2d at 583–84.
11. *Id.* at 427, 917 S.E.2d at 584.
12. 85 Va. App. 664, 694, 919 S.E.2d 782, 796 (2025).
13. *Id.* at 675, 677–78, 919 S.E.2d at 787–88.
14. *Id.* at 678, 919 S.E.2d at 789 (internal quotation marks omitted).
15. *Id.* at 693, 919 S.E.2d at 796 (internal quotation marks omitted).
16. *Id.* at 679, 919 S.E.2d at 789.
17. *Id.* at 693, 919 S.E.2d at 796.

appeals held that this was an abiding opinion that required rehabilitation; however, neither counsel nor the trial court asked the juror any additional questions.[18] Accordingly, the juror should have been stricken for cause.[19]

2. Jury Instructions

In *Person v. Commonwealth*, the Court of Appeals of Virginia held that Person was entitled to a right-to-arm jury instruction at his murder trial.[20] Person was playing a video game in his bedroom when he heard gunshots and his brother cry out that he had been shot.[21] Person grabbed his gun, saw his brother and the victim wrestling over a gun in the living room, and shot the victim.[22] The trial court refused Person's proposed right-to-arm jury instruction because when Person armed himself, he was unaware of what was happening, and thus, lacked knowledge of a specific or cognizable threat.[23] The court of appeals held that Person did not need "to fully comprehend the exact nature of the threat in order to reasonably believe[] that another intended to attack him."[24] Accordingly, the trial court erred by refusing the proposed instruction.[25] The court of appeals found that the error was not harmless because one of the jury instructions stated that malice could be inferred from the use of a gun.[26]

18. *Id.* at 693–94, 919 S.E.2d at 796.

19. *Id.* at 694, 919 S.E.2d at 796. In its opinion, the court of appeals also held that the trial court did not err when it admitted evidence of Rodriguez's prior convictions. *Id.* at 690, 919 S.E.2d at 794. The court further held that the evidence supported Rodriguez's convictions, and thus, the Commonwealth was permitted to retry Rodriguez. *Id.* at 698, 919 S.E.2d at 798.

20. 87 Va. App. 90, 95, 927 S.E.2d 103, 106 (2026). The proposed instruction stated:

A person who reasonably believes that another intends to attack him or another for the purpose of killing him or another or doing him or another serious bodily harm has a right to arm himself for his own necessary self-protection or the protection of another. In such a case, no inference of malice can be drawn from the fact that he armed himself. *Id.* at 105, 927 S.E.2d at 110.

21. *Id.* at 96–97, 927 S.E.2d at 106.

22. *Id.*

23. *Id.* at 101–02, 106, 927 S.E.2d at 108–11.

24. *Id.* at 106, 927 S.E.2d at 111 (internal quotation marks omitted).

25. *Id.* at 107, 927 S.E.2d at 111.

26. *Id.* at 109, 927 S.E.2d at 112.

C. *Admissibility of Evidence*

1. Hearsay

In *Smith v. Commonwealth*, the Court of Appeals of Virginia affirmed the trial court's denial of Smith's motion in limine.[27] Smith and his brother, Barksdale, were charged as codefendants with second-degree murder.[28] The case was later severed and proceeded separately.[29] Smith sought to introduce at his trial Barksdale's statements to police as an adoptive admission by a party opponent.[30] Smith argued that Barksdale was a party opponent because he "was being prosecuted for the same [crime,] in the same court[,] by the same prosecutors," and the Commonwealth could have tried them both jointly.[31] The trial court denied Smith's motion, and the court of appeals later affirmed the ruling.[32] The court of appeals explained that in Smith's criminal case, the Commonwealth was Smith's party opponent, and in Barksdale's criminal case, the Commonwealth was Barksdale's party opponent.[33] The court emphasized that Smith and Barksdale were not party opponents; "Barksdale was merely a witness" in Smith's case.[34] Accordingly, Barksdale's statements were not admissible under the adoptive admission exception to the hearsay rule.[35]

2. Prior Bad Acts

In *Williams v. Commonwealth*, the Court of Appeals of Virginia held that the trial court did not err when it admitted evidence of two prior robberies that Williams committed during his trial for a third robbery.[36] Williams argued that the evidence should have been excluded because of its prejudicial effect.[37] In its analysis, the court of appeals first noted that the balancing test in Rule 2:403 of

27. 85 Va. App. 435, 454, 918 S.E.2d 262, 271–72 (2025).
28. *Id.* at 441, 918 S.E.2d at 265.
29. *Id.* at 441 n.1, 918 S.E.2d at 265 n.1.
30. *Id.* at 447, 918 S.E.2d at 268.
31. *Id.* at 452, 918 S.E.2d at 271.
32. *Id.* at 454, 918 S.E.2d at 271–72.
33. *Id.* at 454, 918 S.E.2d at 271.
34. *Id.*
35. *Id.* at 454, 918 S.E.2d at 271–72. The court of appeals also held that the evidence was sufficient to support Smith's conviction. *Id.* at 457, 918 S.E.2d at 273.
36. 85 Va. App. 718, 740, 919 S.E.2d 808, 819 (2025).
37. *Id.* at 725, 919 S.E.2d at 812.

the Virginia Rules of Evidence differs from the test in Rule 2:404.[38] The court explained that "Rule 2:403 [was] the general standard governing the admissibility of relevant evidence," while "Rule 2:404 govern[ed] the admissibility of prior-bad-act evidence."[39] Under Rule 2:403, evidence must be excluded when the prejudice substantially outweighs the probative value.[40] On the other hand, prior-bad-act evidence must be excluded under Rule 2:404 when the prejudice merely outweighs the probative value.[41] Turning to the contested evidence, the court applied Rule 2:404's balancing test and held that, even under this more lenient standard, exclusion was not required.[42] The court of appeals emphasized that the trial court instructed the jury that the evidence of the two prior robberies could only be considered as evidence of Williams's identity or common method.[43] Accordingly, the trial court did not err when it found that the evidence's probative value outweighed any prejudice.[44]

In *Gilbert v. Commonwealth*, the Court of Appeals of Virginia held that the trial court did not err in admitting evidence of a prior road rage incident.[45] While riding his motorcycle in a Walmart parking lot, Gilbert yelled at the victim for talking on his cellphone while driving.[46] The victim exited his vehicle and pushed Gilbert off of his motorcycle.[47] Gilbert then pulled out a firearm and shot the victim.[48] During Gilbert's trial for second-degree murder, a woman testified that, two days before the shooting, she encountered Gilbert on his motorcycle near the Walmart.[49] The woman explained that Gilbert flashed his gun and threatened to "blow [her] brains out" because she was talking on the phone while driving.[50] The court of appeals held that the prior road rage incident

38. *Id.* at 733, 919 S.E.2d at 815; VA. SUP. CT. R. 2:403 (2026); *id.* R. 2:404 (2026).
39. 85 Va. App. at 733, 919 S.E.2d at 815–16.
40. *Id.* at 733, 919 S.E.2d at 816; R. 2:403.
41. 85 Va. App. at 734, 919 S.E.2d at 816; R. 2:404.
42. 85 Va. App. at 739, 919 S.E.2d at 818.
43. *Id.* at 739–40, 919 S.E.2d at 819.
44. *Id.* at 739, 919 S.E.2d at 818. The court of appeals also found that the trial court did not err when it admitted evidence from Williams's cellphone and denied his motion to strike. *Id.* at 740–41, 743, 919 S.E.2d at 819, 821.
45. 87 Va. App. 472, 487–88, 928 S.E.2d 856, 863 (2026).
46. *Id.* at 479, 928 S.E.2d at 859.
47. *Id.*
48. *Id.* at 480, 928 S.E.2d at 859.
49. *Id.* at 483, 928 S.E.2d at 861.
50. *Id.* at 483–84, 928 S.E.2d at 861.

was relevant to prove that Gilbert acted with malice when he shot the victim.[51] The court emphasized the factual similarities between the two incidents and found that the probative value of the prior road rage incident outweighed any prejudice.[52]

In *Hilliard v. Commonwealth*, the Court of Appeals of Virginia applied the right result, different reason doctrine to affirm the trial court's ruling excluding a homicide victim's prior assault and battery conviction.[53] The court of appeals held that the trial court erred when it found that Hillard had to know about the prior conviction in order for it to be admissible.[54] The court of appeals reaffirmed that when a defendant raises a claim of self-defense, prior acts of violence by the victim are generally admissible to prove that the victim was the probable aggressor, even if the defendant was unaware of the history.[55] In any event, the court of appeals held that the trial court reached the right result in excluding the evidence but for a different reason.[56] The court found that the evidence was stale because the assault and battery conviction occurred seventeen years before the homicide.[57]

3. Attorney-Client Privilege

In *Lee v. Commonwealth*, the Court of Appeals of Virginia found that the admission of Lee's notebook violated the attorney-client privilege.[58] Lee, who was a person of interest in a shooting investigation, hired an attorney to represent him during the investigation.[59] The attorney suggested that Lee create a timeline of his whereabouts on the date of the shooting.[60] Lee began recording his personal observations of the ongoing investigation in a notebook and brought the notebook to a subsequent meeting with his

51. *Id.* at 487, 928 S.E.2d at 863.

52. *Id.* at 487–88, 928 S.E.2d at 863.

53. 86 Va. App. 118, 134, 921 S.E.2d 241, 249 (2025).

54. *Id.* at 133, 921 S.E.2d at 248.

55. *Id.*

56. *Id.* at 134, 921 S.E.2d at 249. The court of appeals also found no error in refusing a voir dire question proposed by the defense because other permitted questions "covered the issue of whether any panelist had bias related to the use of deadly force in self-defense." *Id.* at 136, 921 S.E.2d at 250.

57. *Id.* at 134, 921 S.E.2d at 248.

58. 86 Va. App. 501, 522, 924 S.E.2d 667, 678 (2026).

59. *Id.* at 513, 924 S.E.2d at 673.

60. *Id.*

attorney.[61] The court of appeals held that Lee's notebook was protected by the attorney-client privilege because it was created as a result of the attorney-client relationship and it discussed the subject of the representation.[62] Although the trial court erred in admitting the notebook, the court of appeals held that the error was harmless because there was overwhelming evidence of Lee's guilt.[63]

4. Miscellaneous Evidentiary Issues

In *Coleman v. Commonwealth*, the Court of Appeals of Virginia held that the trial court properly admitted a certificate of blood-alcohol analysis during Coleman's trial for driving under the influence.[64] The court held that the Commonwealth presented sufficient evidence to establish a presumption that Coleman's vehicle, which was parked near an air pump at a Wawa gas station, was located on a highway, within the meaning of Code of Virginia section 46.2-100.[65] The court emphasized that the premises was paved, curbed, had painted markings, and was accessible to the public twenty-four hours a day, seven days a week.[66] The court further found that Coleman failed to rebut this presumption.[67] Although Coleman introduced evidence that no trespassing signs were located on the Wawa convenience store, the court noted that the signs were not posted near the entrance of the premises.[68] Because Coleman was operating his vehicle on a highway, he impliedly consented to the breathalyzer test, and thus, the certificate of analysis was admissible pursuant to section 18.2-268.9(B).[69]

In a different case, the Court of Appeals of Virginia found that the trial court erred when it prevented Coleman from testifying

61. *Id.* at 521–22, 924 S.E.2d at 677.

62. *Id.* at 522, 924 S.E.2d at 677–78.

63. *Id.* at 526, 922 S.E.2d at 679–80. The court of appeals also found that the trial court did not err when it admitted evidence of Lee's refusal to comply with a search warrant for his DNA and instructed the jury that it could consider this evidence, along with the other evidence, when deciding Lee's guilt. *Id.* at 530–34, 924 S.E.2d at 681–83.

64. 86 Va. App. 756, 780, 925 S.E.2d 429, 441 (2026).

65. *Id.* at 772–73, 925 S.E.2d at 437; VA. CODE ANN. § 46.2-100 (Cum. Supp. 2026).

66. 86 Va. App. at 773, 925 S.E.2d at 437.

67. *Id.* at 779, 925 S.E.2d at 440.

68. *Id.* at 777, 925 S.E.2d at 439–40 (finding that the signs posted on the building only "restricted access to the immediate vicinity of the building but did not [restrict access to] the premises as a whole").

69. *Id.* at 780, 925 S.E.2d at 441; § 18.2-268.9(B) (2021).

that he did not intend to lie on a firearm form.[70] The court noted that a conviction for making a materially false statement on a firearm form requires that the statement be made willfully and intentionally.[71] The court found that Coleman's excluded testimony—that he did not know that his prior assault and battery convictions were misdemeanor domestic violence convictions—was relevant to determine whether he possessed the requisite mental state.[72] Accordingly, Coleman should have been permitted to present this evidence.[73]

D. *First Amendment*

In *Commonwealth v. Kuykendall*, the Supreme Court of Virginia held that a probation condition which restricted Kuykendall's internet access did not violate the First Amendment.[74] As part of Kuykendall's sentence for aggravated sexual battery, the trial court placed him on a period of supervised probation.[75] After Kuykendall was released from prison, his probation officer imposed several sex offender special instructions.[76] One of the instructions prohibited Kuykendall from using the internet without prior approval from his probation officer.[77] In its opinion, the supreme court first noted that Kuykendall was not entitled to the full protections of the First Amendment because of his criminal conviction.[78] The supreme court rejected the Court of Appeals of Virginia's characterization of the restriction as a total ban on Kuykendall's internet usage.[79] Instead, the supreme court characterized it as a conditional ban that aided Kuykendall's rehabilitation and protected the public.[80] Accordingly, the supreme court reversed the decision of the court of appeals and found that Kuykendall had not suffered a First Amendment violation.[81]

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70. Coleman v. Commonwealth, 87 Va. App. 160, 178, 927 S.E.2d 137, 146 (2026).
71. *Id.* at 170, 927 S.E.2d at 142.
72. *Id.* at 176, 927 S.E.2d at 145.
73. *Id.* at 178, 927 S.E.2d at 146.
74. No. 250701, 2026 Va. LEXIS 56, at *18 (Sep. 3, 2026).
75. *Id.* at *1.
76. *Id.* at *2.
77. *Id.*
78. *Id.* at *10.
79. *Id.* at *16.
80. *Id.* at *17–18.
81. *Id.* at *18.

E. *Second Amendment*

In *Fleming v. Commonwealth*, the Court of Appeals of Virginia affirmed Fleming's conviction for possession of a machine gun for an offensive or aggressive purpose, in violation of Code of Virginia section 18.2-290.[82] The court rejected Fleming's argument that the statute violated his Second Amendment rights.[83] The court held that "machine guns are dangerous and unusual weapons that are not protected under the Second Amendment."[84] Fleming further argued that the statute was unconstitutionally vague because the statute did not define what constituted "an aggressive or offensive purpose."[85] The court emphasized that section 18.2-291 lists four circumstances that create a rebuttable presumption that a machine gun is used for an aggressive or offensive purpose.[86] The court noted that Fleming's conduct implicated three of these circumstances, and thus, he had notice that his conduct violated the statute.[87]

F. *Fourth Amendment Search and Seizure*

1. Vehicle Searches, Traffic Stops, & Flock Cameras

In *Norwood v. Commonwealth*, the Supreme Court of Virginia affirmed the denial of a motion to suppress the evidence obtained from a traffic stop of Norwood's vehicle, for the reasons articulated by the Court of Appeals of Virginia in its opinion.[88] There, an officer observed Norwood travelling approximately sixty-four miles per hour in the left lane of a three-lane highway.[89] The officer noticed that the posted speed limit was seventy miles per hour and that Norwood remained in the lane for a minute, without passing any

82. 85 Va. App. 27, 36, 55, 915 S.E.2d 774, 779, 788 (2025); VA. CODE ANN. § 18.2-290 (2021).

83. 85 Va. App. at 47, 915 S.E.2d at 784.

84. *Id.* at 46, 915 S.E.2d at 784.

85. *Id.* at 48–49, 915 S.E.2d at 785.

86. *Id.* at 49, 915 S.E.2d at 785; § 18.2-291 (2021).

87. 85 Va. App. at 49–50, 915 S.E.2d at 785. The court of appeals also held that the statute's "rebuttable presumptions did not [violate] Fleming's due process rights." *Id.* at 52, 915 S.E.2d at 787.

88. __ Va. __, __, 925 S.E.2d 333, 333–34 (2026); Norwood v. Commonwealth, No. 1741-23-3, 2024 Va. App. LEXIS 650, at *7–8 (Nov. 12, 2024).

89. 2024 Va. App. LEXIS 650, at *1–2.

vehicles.[90] Based on these circumstances, the court of appeals held that the officer had reasonable suspicion to believe that Norwood was exceeding the normal speed of traffic, in violation of Code of Virginia section 46.2-804.[91]

In *Commonwealth v. Knight-Walker*, the Supreme Court of Virginia held that the police did not unlawfully prolong a traffic stop.[92] During the traffic stop, the officer learned that Knight-Walker's license was suspended.[93] The officer told Knight-Walker that he would not arrest her, but she could not drive the vehicle away.[94] While waiting for Knight-Walker's son to arrive, the officer inquired about contraband and discovered drug paraphernalia in the vehicle glove box.[95] The supreme court held that the mission of the traffic stop was not complete when the officer questioned Knight-Walker because the officer needed to ensure that she would not continue to violate the law by driving the vehicle away.[96] Given the circumstances, the court concluded that the twelve second inquiry regarding the presence of any contraband was reasonable.[97]

In *Moore v. Commonwealth*, the Court of Appeals held that a drug dog's nontrained behavioral changes provided probable cause to search Moore's vehicle.[98] There, an officer walked the dog around the vehicle two times and noticed that the dog's breathing rapidly changed each time it passed the front of the vehicle.[99] The officer also observed the dog turn its head at the rear driver's-side door.[100] The officer subsequently searched the vehicle and discovered drugs in the overhead sunglass compartment.[101] Moore filed a motion to suppress the drugs, arguing that the police lacked probable cause to search his car absent a formal, trained canine alert.[102] At the suppression hearing, the officer testified that the dog received extensive drug-detection training and that it was trained to freeze or

90. *Id.*
91. *Id.* at *7–8; § 46.2-804(1) (2022).
92. __ Va. __, __, 927 S.E.2d 815, 818 (2026).
93. *Id.*
94. *Id.*
95. *Id.* at __, 927 S.E.2d at 818–19.
96. *Id.* at __, 927 S.E.2d at 821.
97. *Id.*
98. 85 Va. App. 634, 652–54, 919 S.E.2d 428, 437 (2025).
99. *Id.* at 644, 919 S.E.2d at 432.
100. *Id.*
101. *Id.* at 641, 919 S.E.2d at 431.
102. *Id.*

sit when it smelled drugs.[103] The officer stated that on eight prior occasions the dog accurately signaled the presence of drugs by displaying nontrained behavioral changes.[104] The officer explained that the dog exhibited nontrained behavioral changes but not a trained alert if the dog was "not within [a] certain threshold [distance]" from the drugs.[105] The trial court found that the officer and the dog were "a reliable search team"; accordingly, the trial court held that the officer had probable cause to search the vehicle and denied the motion to suppress.[106] The court of appeals subsequently affirmed the trial court's ruling, and in its reasoning, it cited the officer's testimony.[107]

In *Robinson v. Commonwealth*, the Court of Appeals of Virginia held that an officer's query of a Flock database did not constitute a search under the Fourth Amendment.[108] In its opinion, the court explained that the City of Norfolk installed 172 Flock cameras along public roads that captured images of vehicles' license plates and stored information regarding the make, model, and color of the vehicles.[109] The court held that Robinson did not have a reasonable expectation of privacy in any of this information because it was publicly available to anyone who saw his vehicle driving down the street.[110] The court rejected Robinson's argument that the cameras amounted to "near perfect surveillance" and emphasized that Robinson was not continuously monitored throughout the city.[111] Accordingly, police were not required to obtain a search warrant before accessing the Flock database.[112]

2. Searches of the Person

In *Commonwealth v. Hubbard*, the Supreme Court of Virginia reversed the decision of the Court of Appeals of Virginia and reinstated Hubbard's conviction for possession with intent to distribute

103. *Id.* at 641–42, 919 S.E.2d at 431–32.
104. *Id.* at 644, 919 S.E.2d at 433.
105. *Id.* at 642–43, 919 S.E.2d at 432.
106. *Id.* at 644–45, 919 S.E.2d at 433.
107. *Id.* at 650–54, 919 S.E.2d at 436–37.
108. 87 Va. App. 262, 274, 927 S.E.2d 822, 828 (2026).
109. *Id.* at 265, 927 S.E.2d at 824.
110. *Id.* at 271, 927 S.E.2d at 827.
111. *Id.* at 271–72, 927 S.E.2d at 827–28.
112. *Id.* at 274, 927 S.E.2d at 828.

cocaine.[113] In its opinion, the supreme court found that the officer had probable cause to arrest Hubbard due to the smell of marijuana emanating from Hubbard's vehicle and the presence of suspected drugs on the floorboard.[114] Accordingly, the officer also had the authority to search Hubbard incident to arrest.[115] The court further found that the officer was permitted to remove drug baggies from Hubbard's underwear because the baggies posed a safety risk and the officer had a duty to prevent the destruction of evidence.[116]

In *Hollingsworth v. Commonwealth*, the Court of Appeals of Virginia affirmed Hollingsworth's conviction for possession of a firearm by a convicted felon, in violation of Code of Virginia section 18.2-308.2.[117] After receiving a report of a potential robbery, police encountered Hollingsworth, who matched the general description of the perpetrator.[118] An officer conducted a pat down search of Hollingsworth that did not yield any weapons.[119] A witness subsequently identified Hollingsworth as the individual who brandished the firearm and explained that the firearm had an extended magazine.[120] During a second pat down search of Hollingsworth, police recovered the firearm.[121] The court of appeals held that the second pat down search was reasonable because of the newly acquired information.[122]

In *Washington v. Commonwealth*, the Court of Appeals of Virginia affirmed the trial court's denial of Washington's motion to suppress.[123] There, police received a call alleging that a group of individuals were smoking marijuana in a high crime area.[124] Police

113. 304 Va. 400, 405, 920 S.E.2d 48, 50 (2025).

114. *Id.* at 414, 920 S.E.2d at 55. Of note, the search occurred prior to the enactment of Code of Virginia section 4.1-1302, which now prohibits stops, searches, and seizures based solely on the odor of marijuana. *Id.* at 414 n.3, 920 S.E.2d at 55 n.3. Additionally, the officer was aware that Hubbard had an active Fourth Amendment rights waiver. *Id.* at 406, 920 S.E.2d at 50.

115. *Id.* at 415, 920 S.E.2d at 55.

116. *Id.* at 416–17, 920 S.E.2d at 56–57.

117. 86 Va. App. 258, 264, 922 S.E.2d 553, 556 (2025); VA. CODE ANN. § 18.2-308.2(A) (Cum. Supp. 2026).

118. 86 Va. App. at 264–65, 922 S.E.2d at 556.

119. *Id.* at 265, 922 S.E.2d at 556.

120. *Id.* at 266, 922 S.E.2d at 557.

121. *Id.*

122. *Id.* at 273–74, 922 S.E.2d at 560–61.

123. 87 Va. App. 349, 365, 927 S.E.2d 865, 873 (2026).

124. *Id.* at 355, 357, 927 S.E.2d at 868–69.

recognized Breckenridge due to his association with a gang and his involvement in drug distribution.[125] Police also remembered seeing Breckenridge and Washington display firearms in online music videos.[126] When police approached the group, Breckenridge and Washington ran away.[127] Washington tossed his backpack while being detained.[128] An officer patted the outside of the backpack, felt a firearm, and then removed the firearm and drugs.[129] The court of appeals held that, under the totality of these circumstances, police had reasonable suspicion to detain Washington.[130] The court further held that the officer had reasonable suspicion to frisk Washington's backpack.[131] Although Washington was handcuffed when police conducted the frisk, the court held that the situation still presented officer safety concerns.[132] The court reasoned that returning an unfrisked backpack, which likely contained weapons, could have exposed the officer to immediate danger.[133] Accordingly, the trial court properly denied Washington's motion to suppress.[134]

3. Searches of Residences

In *Hamm v. Commonwealth*, the Court of Appeals of Virginia affirmed the trial court's denial of Hamm's motion to suppress.[135] There, officers obtained a warrant to search a residence after receiving information that an individual who resided in the lower level possessed a large quantity of methamphetamine.[136] Officers arrived at the residence and found the individual on the main floor of the residence.[137] In a nearby bedroom, officers discovered a purse containing methamphetamine and Hamm's identification card.[138] Hamm moved to suppress the evidence, arguing that the warrant did not authorize the officers to search her bedroom; she claimed

125. *Id.* at 355, 927 S.E.2d at 868.
126. *Id.* at 361, 927 S.E.2d at 871.
127. *Id.*
128. *Id.* at 356, 927 S.E.2d at 868.
129. *Id.*
130. *Id.* at 362, 927 S.E.2d at 871.
131. *Id.* at 365, 927 S.E.2d at 873.
132. *Id.* at 363–65, 927 S.E.2d at 872–73.
133. *Id.* at 365, 927 S.E.2d at 872–73.
134. *Id.* at 365, 927 S.E.2d at 873.
135. 85 Va. App. 183, 195, 916 S.E.2d 874, 880 (2025).
136. *Id.* at 186, 916 S.E.2d at 875.
137. *Id.* at 187, 916 S.E.2d at 875–76.
138. *Id.* at 188, 916 S.E.2d at 876.

that the officers were only permitted to search the basement.[139] The trial court denied the motion, and the court of appeals subsequently affirmed the trial court's decision.[140] In its opinion, the court of appeals found that the property was a single-family residence and not a multiple-occupancy structure.[141] The court emphasized the fact that the residence had a single unit number, a single mailbox, and that none of the bedroom doors contained locks.[142] The court concluded that the warrant permitted police to search the entire residence for drugs because Hamm's roommate had access to the entire residence and could have placed the drugs anywhere.[143]

G. *Statutory Exclusionary Rules*

In *Flint v. Commonwealth*, the Court of Appeals of Virginia held that a magistrate's failure to file a search warrant affidavit with the clerk's office, as required by Code of Virginia section 19.2-54, did not mandate suppression.[144] After executing a search warrant on Flint's residence, an officer filed the warrant and accompanying affidavit with the clerk's office.[145] Flint later sought suppression under section 19.2-54 when he discovered that the affidavit was missing from the clerk's office.[146] At a suppression hearing, the officer presented a certified copy of the search warrant, which bore the clerk's stamp, and a copy of the affidavit.[147] Flint asked the court of appeals to find that the officer's copy of the affidavit was illegible, but the court rejected his invitation to engage in fact finding.[148] The court of appeals emphasized the trial court's statement that it could not "find that the warrant is illegible or not readable."[149] Although the magistrate who issued the search warrant failed to file the affidavit with the clerk's office, as required by section 19.2-54, the court of appeals found that Flint had not suffered

139. *Id.*
140. *Id.* at 188, 195, 916 S.E.2d at 876, 880.
141. *Id.* at 191, 916 S.E.2d at 878.
142. *Id.*
143. *Id.* at 194, 916 S.E.2d at 879.
144. 85 Va. App. 365, 371, 381–82, 917 S.E.2d 554, 557, 562 (2025); VA. CODE ANN. § 19.2-54 (2022).
145. 85 Va. App. at 371, 917 S.E.2d at 556.
146. *Id.* at 371, 917 S.E.2d at 557.
147. *Id.* at 371–72, 917 S.E.2d at 557.
148. *Id.* at 378, 917 S.E.2d at 560.
149. *Id.*

any prejudice as a result of the procedural defect.[150] The court emphasized that the officer brought a copy of the affidavit to the hearing and that Flint cross-examined the officer about the document's contents.[151] Because the notice-based purpose of section 19.2-54 was satisfied, the trial court did not err in denying the motion to suppress.[152]

In *Blow v. Commonwealth*, the Supreme Court of Virginia held that the requirements of Code of Virginia section 19.2-56(B) only applied to search warrants for a place of abode.[153] After Blow sold an undercover officer drugs at a clothing store, police obtained a warrant to search the store.[154] Blow moved to suppress the contraband obtained from the search, arguing that the officers failed to give him a copy of the search warrant and its supporting affidavit, as required by section 19.2-56(B).[155] The supreme court analyzed the plain language of the statute and held that the statute only applied to search warrants for a "place of abode."[156] Because the store was a commercial establishment, police were not required to give Blow a copy of the search warrant and the accompanying affidavit.[157]

H. *Fifth Amendment*

1. Custodial Interrogations

In *Johnson v. Commonwealth*, the Court of Appeals of Virginia affirmed the denial of a motion to suppress Johnson's hospital statements.[158] Johnson argued that his *Miranda* waiver was not knowing, voluntary, and intelligent, but the court of appeals held

150. *Id.* at 377–79, 917 S.E.2d at 559–60; VA. CODE ANN. § 19.2-54 (2022).

151. 85 Va. App. at 377–78, 917 S.E.2d at 560.

152. *Id.* at 379, 917 S.E.2d at 560; § 19.2-54. The court also rejected Flint's argument that a *Franks* violation occurred when the officer erroneously stated in the affidavit that Flint's hunting privilege was revoked. 85 Va. App. at 380–81, 917 S.E.2d at 561–62. The court noted that, even without the challenged statement, the affidavit still stated that Flint's hunting license was revoked, and thus, established probable cause. *Id.* at 380, 917 S.E.2d at 561

153. __ Va. __, __, 927 S.E.2d 811, 815 (2026); § 19.2-56(B) (Cum. Supp. 2026).

154. __ Va. at __, 927 S.E.2d at 812.

155. *Id.*; § 19.2-56(B).

156. __ Va. at __, 927 S.E.2d at 815.

157. *Id.*

158. 85 Va. App. 257, 265, 916 S.E.2d 910, 913 (2025).

that this argument was meritless.[159] The court of appeals found that no waiver was required because Johnson was not in custody when police questioned him at the hospital.[160] The court of appeals emphasized the fact that Johnson asked to speak to police, officers told him he was not under arrest and that no charges had been filed, and the officers asked open-ended questions in a mild tone.[161] The court of appeals rejected Johnson's argument that because officers provided a *Miranda* warning, the officers conceded that Johnson was in custody.[162] The court also found that the police did not use any coercive tactics when they spoke with Johnson.[163] Accordingly, the trial court properly denied the motion to suppress.[164]

In *Commonwealth v. Fayne*, the Supreme Court of Virginia found that the trial court did not err in declining to suppress statements Fayne made during a police interview.[165] Several hours into the interview, Fayne requested an attorney, but police continued to question him for another hour.[166] The officers eventually left the interview room and closed the door.[167] After a few seconds, Fayne opened the door, requested a different officer, and stated that he was ready to talk.[168] Fayne subsequently confessed to his role in the shooting.[169] The supreme court found that police questioned Fayne in violation of *Edwards*[170] because the police did not cease the interrogation after Fayne invoked his right to counsel.[171] However, the court found that Fayne later "reinitiated the communication[] and . . . knowingly and intelligently waived his right to counsel."[172] Accordingly, Fayne's confession was admissible despite the initial *Edwards* violation.[173]

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159. *Id.* at 275, 283, 916 S.E.2d at 918, 922.
160. *Id.* at 283, 916 S.E.2d at 922.
161. *Id.* at 281, 916 S.E.2d at 921.
162. *Id.* at 282, 916 S.E.2d at 921.
163. *Id.* at 288, 916 S.E.2d at 924.
164. *Id.* at 292, 916 S.E.2d at 926. The court also held that any error in excluding Johnson's expert was harmless.
165. __ Va. __, __, 928 S.E.2d 406, 411–12 (2026).
166. *Id.* at __, 928 S.E.2d at 408–09.
167. *Id.* at __, 928 S.E.2d at 409.
168. *Id.*
169. *Id.*
170. 451 U.S. 477, 486–87 (1981) (requiring interrogation to stop when a suspect invokes the right to counsel).
171. __ Va. at __, 928 S.E.2d at 410.
172. *Id.* at __, 928 S.E.2d at 410–12.
173. *Id.* at __, 928 S.E.2d at 411–12.

2. Double Jeopardy

In *Perry v. Commonwealth*, the Court of Appeals of Virginia held that Perry's three convictions for indecent liberties with a child under the age of fifteen did not violate double jeopardy.[174] The court first noted that Code of Virginia section 18.2-370(A) disjunctively lists multiple acts that constitute violations of the statute.[175] Accordingly, the unit of prosecution was each distinct act.[176] The court noted that Perry committed three of these distinct acts when he exposed his penis to the victim, asked to touch the victim's genitals, and proposed oral sex.[177] Accordingly, the court rejected Perry's double jeopardy claim.[178]

In *Chavarria v. Commonwealth*, the Court of Appeals of Virginia held that Chavarria's separate sentences for object sexual penetration and aggravated sexual battery did not violate double jeopardy.[179] Applying the *Blockburger* test,[180] the court found that each crime required proof of an element not contained in the other.[181] The court noted that object sexual penetration required penetration with an object while aggravated sexual battery required sexual abuse.[182] Accordingly, the statutory language demonstrated the General Assembly's intent to authorize separate punishments for the same conduct.[183]

I. *Confrontation Clause*

In *House v. Commonwealth*, the Court of Appeals of Virginia held that House's confrontation rights were not violated when a key witness for the Commonwealth wore a mask while testifying at House's murder trial.[184] Applying the two-part test set forth in

174. 87 Va. App. 388, 392, 397, 928 S.E.2d 551, 553, 556 (2026).
175. *Id.* at 396, 928 S.E.2d at 555; VA. CODE ANN. § 18.2-370(A) (2021).
176. 87 Va. App. at 397, 928 S.E.2d at 556.
177. *Id.* at 396, 928 S.E.2d at 555.
178. *Id.* at 395, 928 S.E.2d at 554. The court of appeals also held that the trial court did not abuse its discretion when it permitted the Commonwealth to recall the victim as a witness. *Id.* at 398, 928 S.E.2d at 556.
179. 87 Va. App. 318, 324, 927 S.E.2d 850, 852–53 (2026).
180. Blockburger v. United States, 284 U.S. 299, 304 (1932).
181. 87 Va. App. at 325, 927 S.E.2d at 853.
182. *Id.*
183. *Id.*
184. 87 Va. App. 638, 673, 929 S.E.2d 444, 462 (2026).

Maryland v. Craig,[185] the court first found that the state had a legitimate interest in ensuring the witness's safety.[186] The court noted that the witness refused to testify unless his identity was hidden because he feared that House, who was a member of the Bloods gang, would recognize him and seek retribution.[187] The court further found that the witness's testimony was sufficiently reliable and emphasized the fact that the jurors could still see a portion of the witness's face.[188] Accordingly, House did not suffer a confrontation clause violation.[189]

In *Caldwell v. Commonwealth*, the Court of Appeals of Virginia held that the admission of a certificate of analysis did not violate Caldwell's confrontation rights.[190] There, a blood withdrawal certificate, that was attached to the certificate of analysis, contained a nurse's statement that she was qualified to conduct a blood draw and that she conducted one in compliance with Code of Virginia section 18.2-268.5.[191] The court of appeals rejected Caldwell's argument that the confrontation clause required the Commonwealth to call the nurse as a witness.[192] The court held that the nurse's statements were nontestimonial because their primary purpose was administrative record-keeping.[193] The court emphasized that the "statements were not accusatory in nature;" they merely stated that the nurse followed the required procedure.[194]

J. *Withdrawal of Guilty Pleas*

In *Sine v. Commonwealth*, the Court of Appeals of Virginia held that the trial court did not err when it declined to grant Sine's post-sentence motion to withdraw his guilty plea.[195] There, Sine entered a plea agreement which stated that he would be released on bond pending his sentencing hearing, and if no problems arose during

185. 497 U.S. 836, 857 (1990) (permitting a child victim to testify via a one-way closed-circuit television upon a showing of necessity and reliability).

186. 87 Va. App. at 669, 929 S.E.2d at 459–60.

187. *Id.* at 660, 668, 929 S.E.2d at 455, 459.

188. *Id.* at 671–72, 929 S.E.2d at 461.

189. *Id.* at 673, 929 S.E.2d at 462.

190. 86 Va. App. 99, 117, 921 S.E.2d 231, 240 (2025).

191. *Id.* at 113, 921 S.E.2d at 238; VA. CODE ANN. § 18.2-268.5 (2021).

192. 86 Va. App. at 117, 921 S.E.2d at 240.

193. *Id.* at 115, 921 S.E.2d at 239.

194. *Id.* at 115–16, 921 S.E.2d at 239–40.

195. 87 Va. App. 285, 295, 927 S.E.2d, 834, 839 (2026).

his release, the trial court would impose a suspended sentence.[196] Sine subsequently violated his bond conditions by testing positive for alcohol, and at the sentencing hearing, the court imposed a four-year active sentence.[197] The court of appeals held that the manifest injustice standard applied because Sine filed his motion to withdraw his guilty plea after the trial court entered the sentencing order.[198] The court found that Sine's action of violating the terms of the plea agreement did not constitute a manifest injustice, and thus, the trial court was not required to grant his motion to withdraw his guilty plea.[199]

K. *Sentencing*

In *Commonwealth v. Jackson*, the Supreme Court of Virginia held that the Court of Appeals of Virginia misinterpreted statements that the trial court made during sentencing.[200] The court of appeals initially held that the trial court erred when it gave substantial weight to the fact that Jackson pled not guilty to probation violations.[201] The supreme court later clarified that the trial court never explicitly mentioned Jackson's pleas.[202] When the trial court stated that "responsibility was not taken" for the violations, it was simply acknowledging that Jackson was a poor candidate for rehabilitation.[203] The supreme court also analyzed the trial court's statement that "the opposite of acceptance of responsibility can be considered by the Court in imposing sentence."[204] The supreme court explained that the trial court was simply stating that if Jackson showed no signs of accepting responsibility, his sentence would remain at the baseline.[205] Accordingly, the supreme court held that

196. *Id.* at 289, 927 S.E.2d at 836.

197. *Id.* at 289–90, 927 S.E.2d at 836.

198. *Id.* at 295, 927 S.E.2d at 838.

199. *Id.* at 295, 927 S.E.2d at 838–39. Sine also argued that the trial court erred by not granting his request for resentencing; however, the court of appeals held that this argument was barred by the approbate-reprobate doctrine. *Id.* at 291–92, 927 S.E.2d at 837. Sine approbated by requesting that he be sentenced to the low end of the guidelines and then reprobated by later requesting that he be sentenced in accordance with the plea agreement. *Id.* at 292, 927 S.E.2d at 837.

200. 304 Va. 515, 525–26, 922 S.E.2d 522, 527 (2025).

201. Jackson v. Commonwealth, No. 1065-23-4, 2024 Va. App. LEXIS 499, at *9–10 (Aug. 27, 2024).

202. 304 Va. at 532–33, 922 S.E.2d at 531.

203. *Id.* at 533, 922 S.E.2d at 531.

204. *Id.* at 531, 922 S.E.2d at 530.

205. *Id.*

the trial court did not abuse its discretion when it sentenced Jackson, so it reversed the judgment of the court of appeals.[206]

In *Commonwealth v. Moncrea*, the Supreme Court of Virginia found that Moncrea's sentencing order did not violate Code of Virginia section 19.2-303.[207] Moncrea had alleged that his period of supervised probation exceeded the five-year statutory maximum listed in section 19.2-303.[208] The sentencing order at issue imposed supervised probation and described the period "as lasting until released by the Court or the Probation Officer."[209] The supreme court concluded that there was no error in the sentencing order because Moncrea had not yet completed five years of supervised probation, and the record was devoid of any evidence that the trial court intended for Moncrea to remain on probation for more than five years.[210]

L. *Expungement*

In *N.T.A. v. Commonwealth*, the Court of Appeals of Virginia held that N.T.A.'s criminal charges were eligible for expungement under Code of Virginia section 19.2-392.2(A)(2) despite being nolle prossed or dismissed as part of a plea agreement.[211]

M. *Appellate Procedure*

1. Mootness

In *Harris v. Commonwealth*, the Court of Appeals of Virginia dismissed Harris's appeal, challenging the denial of a motion to modify a sentence, as moot.[212] In its analysis, the court of appeals noted that under Code of Virginia section 19.2-303, a trial court may modify a defendant's sentence before they are transferred to the custody of the Department of Corrections or within sixty days of such transfer.[213] The court of appeals acknowledged that the

206. *Id.* at 533, 922 S.E.2d at 532.
207. __ Va. __, __, 927 S.E.2d 443, 446 (2026); VA. CODE ANN. § 19.2-303 (2022).
208. __ Va. at __, 927 S.E.2d at 444.
209. *Id.*
210. *Id.* at __, 927 S.E.2d at 446; § 19.2-303.
211. 87 Va. App. 274, 277, 927 S.E.2d 828, 830 (2026); § 19.2-392.2(A)(2) (Cum. Supp. 2026).
212. 85 Va. App. 497, 500, 918 S.E.2d 293, 294 (2025).
213. *Id.* at 504–05, 918 S.E.2d at 296; § 19.2-303 (2022).

trial court ruled on Harris's motion within this strict time requirement.[214] However, the court of appeals noted that if it reversed the trial court's judgment and remanded the matter, the trial court would no longer have jurisdiction to rule on the motion because now more than sixty days had elapsed from the time Harris was transferred to Department custody.[215] Accordingly, any new order issued by the trial court would be void ab initio.[216] Because the trial court could no longer issue any relief, the appeal was moot.[217] The court of appeals rejected Harris's argument that this interpretation led to an absurd result.[218] The court of appeals noted that a defendant can ensure that the trial court retains jurisdiction by asking the trial court to suspend the transmission of the sentencing order to the Department or asking it to issue a stay of transfer.[219]

In *Matheson v. Commonwealth*, the Court of Appeals of Virginia held that Matheson's appeal, challenging the imposition of active incarceration for a first technical probation violation, remained justiciable.[220] The Commonwealth argued that Matheson's appeal was moot because she had already served the six-month sentence.[221] In its opinion, the court of appeals emphasized that the trial court imposed a twenty-five dollar jail admission fee as part of Matheson's sentence.[222] The court held that if Matheson was wrongly sentenced to active incarceration, then she should not have been charged this fee.[223] Accordingly, Matheson's appeal was justiciable because the court could order a refund.[224]

214. 85 Va. App. at 511, 918 S.E.2d at 299–300.
215. *Id.* at 508, 918 S.E.2d at 298.
216. *Id.*
217. *Id.*
218. *Id.* at 509, 918 S.E.2d at 298.
219. *Id.* at 509–10, 918 S.E.2d at 299.
220. 86 Va. App. 201, 204, 921 S.E.2d 282, 283–84 (2025).
221. *Id.* at 204, 921 S.E.2d at 283.
222. *Id.* at 210, 921 S.E.2d at 286.
223. *Id.* at 212, 921 S.E.2d at 287.
224. *Id.* at 204, 212, 921 S.E.2d at 283–84, 287. The court of appeals ultimately found that the trial court erred in sentencing Matheson to active incarceration for a first technical violation. *Id.* at 213–14, 921 S.E.2d at 288. The court reversed the sentence and "remand[ed] with instructions to impose a sentence of no incarceration and refund the unauthorized [fee]." *Id.* at 215, 921 S.E.2d at 289.

2. Preservation

In *Jackson v. Commonwealth*, the Court of Appeals of Virginia applied the ends-of-justice exception to excuse Jackson's failure to preserve his due process claim.[225] During Jackson's sentencing hearing, the trial judge referenced Jackson's race, compared Jackson to another black defendant sentenced earlier in the day, and discussed his own family's experience with gun violence.[226] The court of appeals held that these remarks gave a reasonable appearance that the trial judge considered impermissible factors, most notably race, when sentencing Jackson.[227] The court of appeals applied the ends-of-justice exception to excuse Jackson's failure to object to the comments at the sentencing hearing.[228] The court reasoned that the "denial of a fair and impartial sentencing [judge] constitutes a miscarriage of justice."[229]

In *Manley v. Commonwealth*, the Court of Appeals of Virginia held that Manley failed to preserve his argument that the trial court erred by imposing indefinite supervised probation, in violation of Code of Virginia section 19.2-303.[230] Although Manley requested that the trial court impose a definite probation period, he failed to argue that the suspension period exceeded the statutory maximum.[231] Accordingly, the court of appeals held that Manley's argument was waived.[232] The court rejected Manley's contention that his sentencing order was void ab initio.[233] The court of appeals explained that if a trial court imposed a period of supervised probation that exceeded the statutory maximum, the order would be

225. 86 Va. App. 722, 744–45, 925 S.E.2d 412, 423 (2026); VA. SUP. CT. R. 5A:18 (2026) ("No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice.").

226. 86 Va. App. at 737, 925 S.E.2d at 419–20. At one point, the judge remarked, "What is it going to take for young [B]lack men to quit killing each other?" *Id.* at 737, 925 S.E.2d at 419.

227. *Id.* at 745, 925 S.E.2d at 423.

228. *Id.*

229. *Id.* The court of appeals ultimately concluded that the sentencing record undermined confidence in the fairness and impartiality of the sentencing proceeding, in violation of due process, and the court remanded the case for resentencing before a different judge. *Id.* at 755–56, 925 S.E.2d at 428–29.

230. 86 Va. App. 308, 312, 923 S.E.2d 737, 739 (2025); VA. CODE ANN. § 19.2-303 (2022).

231. 86 Va. App. at 318, 923 S.E.2d at 742; § 19.2-303.

232. 86 Va. App. at 318, 923 S.E.2d at 742.

233. *Id.* at 321, 923 S.E.2d at 743.

voidable, and thus, Manley had to contemporaneously object to preserve the issue for appeal.[234]

N. *Harmless Error*

In *Murray v. Commonwealth*, the Court of Appeals of Virginia applied the harmless error doctrine to affirm the trial court's denial of Murray's motion in limine.[235] In its analysis, the court of appeals assumed that the trial court erred when it permitted the Commonwealth to call the complaining witness a "victim" at trial.[236] However, the court concluded that any such error was harmless because the use of the term "victim" did not contribute to Murray's conviction.[237] The court emphasized that neither the prosecutor nor the trial judge used the term; the term was used on two occasions by the Commonwealth's witnesses.[238] The court further noted that one of the witnesses, a forensic nurse, used the term when describing her job duties and the other, an officer, used the term when explaining that he spoke to the complainant at the crime scene.[239]

O. *Probation Revocation*

In *Commonwealth v. Brawner*, the Supreme Court of Virginia reversed a decision of the Court of Appeals of Virginia vacating Brawner's probation violation.[240] Brawner pled guilty to drug and firearm charges, and the trial court imposed a suspended sentence, conditioned on a period of supervised probation, and ordered that Brawner pay court costs or establish a payment plan within forty-five days.[241] At a subsequent revocation hearing, the trial court heard evidence that, over the course of a year, Brawner only made two payments towards court costs.[242] The trial court asked defense

234. *Id.*; § 19.2-303. The court of appeals also found that the trial court did not abuse its discretion when it revoked Manley's suspended sentence and imposed an active sentence of two years and sixteen days. 86 Va. App. at 316, 923 S.E.2d at 741.

235. 87 Va. App. 12, 17–18, 925 S.E.2d 886, 889 (2026).

236. *Id.* at 25, 925 S.E.2d at 893.

237. *Id.* at 26, 925 S.E.2d at 893.

238. *Id.*

239. *Id.* The court of appeals also found the record "replete with evidence" to support a jury instruction on flight. *Id.* at 28, 925 S.E.2d at 894.

240. 304 Va. 563, 563, 923 S.E.2d 902, 902–03 (2025).

241. *Id.* at 563–64, 923 S.E.2d at 903.

242. *Id.* at 564–65, 923 S.E.2d at 903.

counsel whether Brawner requested to perform community service in lieu of payment, pursuant to Code of Virginia section 19.2-354(C).[243] Defense counsel responded that Brawner had not, and the trial court remarked, "I don't see any reason why he couldn't [have] come before [t]he Court to do community service hours."[244] The trial court later found Brawner in violation of the terms of his probation for ignoring his obligation to pay court costs.[245]

The court of appeals held that when the trial court mentioned community service as an alternative, it implicitly found that Brawner was unable to pay.[246] Because Brawner was unable to pay and the trial court did not advise him of the availability of community service, the court of appeals held that Brawner did not willfully fail to seek relief from the order to pay costs.[247] The supreme court subsequently held that the court of appeals misconstrued the trial court's comment.[248] The supreme court noted that the trial court merely stated that Brawner could have sought community service if he was truly unable to pay his costs.[249] The supreme court held that the evidence did not establish that Brawner was unable to pay costs.[250] The court noted that in the year before the revocation hearing, Brawner worked multiple jobs and posted a $35,000 bond and a $55,000 bond.[251] Accordingly, the supreme court held that the trial court did not err in finding that Brawner willfully violated his obligation to pay court costs and reinstated the probation violation.[252]

In *Dickenson v. Commonwealth*, the Court of Appeals of Virginia held that the trial court misconstrued Code of Virginia section 19.2-306.1(A).[253] In 2014, Dickenson was convicted of larceny of bank notes, and in 2017, she was convicted of grand larceny of a

243. *Id.* at 565, 923 S.E.2d at 904 (citing VA. CODE ANN. § 19.2-345(C) but actually referring to § 19.2-354(C) (Cum. Supp. 2026)).

244. 304 Va. at 565, 923 S.E.2d at 904 (alterations in original).

245. *Id.*

246. Brawner v. Commonwealth, No. 0216-23-4, 2024 Va. App. LEXIS 489, at *7 (Aug. 27, 2024), *rev'd*, 304 Va. 563, 923 S.E.2d 902 (2025).

247. *Id.* at *8.

248. Commonwealth v. Brawner, 304 Va. 563, 568–69, 923 S.E.2d 902, 906 (2025).

249. *Id.* at 569, 923 S.E.2d at 906.

250. *Id.* at 567, 923 S.E.2d at 905.

251. *Id.*

252. *Id.* at 569, 923 S.E.2d at 906.

253. 87 Va. App. 56, 63, 926 S.E.2d 511, 515 (2026); VA. CODE ANN. § 19.2-306.1(A) (2022).

firearm.[254] At a revocation hearing in 2025, the trial court found that Dickenson had committed a technical probation violation.[255] This was Dickenson's sixth technical violation of the terms of her 2014 suspended sentence and her second technical violation of the terms of her 2017 suspended sentence.[256] Dickenson argued that the trial court could not impose more than fourteen days of active incarceration for the second technical violation, pursuant to section 19.2-306.1(C).[257] The trial court held that section 19.2-306.1(A) permitted it to treat the second technical violation as Dickenson's sixth technical violation and it sentenced her to six months of active time.[258] The court of appeals later explained that section 19.2-306.1(A) "requires a trial court to treat multiple technical violations as a single technical violation," for sentencing purposes, if they "arise from a single course of conduct."[259] The court of appeals held that the statute was not applicable in this case, where a single technical violation broke the terms and conditions of two separate suspended sentences.[260] Accordingly, the trial court erred by imposing more than fourteen days of active time for the second technical violation of the terms of the 2017 suspended sentence.[261]

P. *Protective Orders*

In *Claramunt v. Commonwealth*, the Court of Appeals of Virginia, sitting en banc, issued a plurality decision affirming Claramunt's conviction for violating an emergency protective order ("EPO") under Code of Virginia section 16.1-253.2.[262] The plurality opinion found that the EPO remained in effect and was not superseded by the permanent protective order ("PPO"), because Claramunt was never personally served with the PPO, which is the only way to make a PPO effective.[263] The concurrence joined in the judgment but would have held that "an EPO remains in effect during its short lifespan unless sooner dissolved or modified by express

254. 87 Va. App. at 59, 926 S.E.2d at 513.
255. *Id.* at 60–61, 926 S.E.2d at 513–14.
256. *Id.* at 60, 926 S.E.2d at 513.
257. *Id.*; § 19.2-306.1(C) (2022).
258. 87 Va. App. at 60–61, 926 S.E.2d at 513–14; § 19.2-306.1(A) (2022).
259. 87 Va. App. at 64–65, 926 S.E.2d at 515–16 (internal quotation marks omitted); § 19.2-306.1(A).
260. 87 Va. App. at 65–66, 926 S.E.2d at 516.
261. *Id.* at 66, 926 S.E.2d at 516.
262. 86 Va. App. 366, 368–69, 924 S.E.2d 180, 181 (2025) (en banc); § 16.1-253.2 (2025).
263. 86 Va. App. at 375, 377, 924 S.E.2d at 184–85.

order of the court" regardless of whether a subsequent PPO was personally served.[264]

Q. *Sufficiency of the Evidence Decisions*

1. Drug Offenses

In *Cuffee v. Commonwealth*, the Supreme Court of Virginia affirmed Cuffee's conviction for possession of fentanyl with the intent to distribute.[265] Police discovered nine individually packaged baggies of powder cocaine, crack cocaine, BMDP, alprazolam, and a mixture of heroin and fentanyl in Cuffee's jacket pocket.[266] Cuffee was later charged with several offenses, including possession with intent to distribute heroin and possession with intent to distribute fentanyl.[267] During Cuffee's trial, a detective explained that the heroin and fentanyl mixture was popular with drug users and the mixture sold at a higher price than just heroin alone.[268] Cuffee moved to strike the fentanyl charge, arguing that the evidence was insufficient to establish that he knew that the heroin was mixed with fentanyl.[269] The trial court rejected this argument, and the jury convicted Cuffee of all of the charged offenses.[270] The supreme court later upheld Cuffee's fentanyl conviction.[271] In its opinion, the court found that Cuffee was "an experienced drug dealer" because of his two prior drug convictions, the variety of drugs found in his pocket, the packaging of the drugs, and the cash and firearm also found in his possession.[272] Because Cuffee was an experienced drug dealer, the jury could have reasonably inferred that he was aware of the popularity of the mixture and its higher price point.[273] Accordingly, even if Cuffee did not create the mixture himself, he would have known that he purchased a mixture because of the price.[274]

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264. *Id.* at 377, 924 S.E.2d at 185 (Raphael, J., concurring).
265. __ Va. __, __, 928 S.E.2d 397, 399 (2026).
266. *Id.* at __, 928 S.E.2d at 400.
267. *Id.*
268. *Id.* at __, 928 S.E.2d at 401.
269. *Id.*
270. *Id.*
271. *Id.* at __, 928 S.E.2d at 406.
272. *Id.* at __, 928 S.E.2d at 403–04 (emphasis omitted).
273. *Id.* at __, 928 S.E.2d at 404.
274. *Id.*

In *Blanton v. Commonwealth*, the Court of Appeals of Virginia held that the evidence was sufficient to support Blanton's conviction for possession of methamphetamine with the intent to distribute.[275] The court rejected Blanton's argument that the Commonwealth failed to prove that he intended to distribute at least two hundred grams, the amount required for enhanced punishment under Code of Virginia section 18.2-248(H)(5).[276] The court found that Blanton's confessed intent to distribute the drugs was corroborated by his possession of a scale, the quantity and value of the drugs, and the almost $2,000 found in his pocket.[277] The court further held that the enhanced penalty provision did not require proof of unitary packaging or proof of consistency through the mixture.[278]

2. Firearm Offenses

In *Reed v. Commonwealth*, the Court of Appeals of Virginia held that the evidence was sufficient to support Reed's conviction for brandishing a firearm.[279] There, Reed walked in front of a school, while it was in session, with an assault rifle strapped to his back and a pistol holstered on his hip.[280] Officers approached Reed and he left the property, but he later returned to the school wearing the hood of his sweatshirt over his head.[281] Reed argued that his actions of open-carrying the firearms did not amount to brandishing.[282] The court rejected this argument, finding that Reed exhibited the firearms in an "ostentatious, shameless or aggressive manner," causing a school lockdown.[283]

In *Smith v. Commonwealth*, the Court of Appeals of Virginia affirmed Smith's two convictions for solicitation to purchase a firearm by a person ineligible to possess a firearm.[284] The court acknowledged that Code of Virginia section 18.2-308.2:2(N) did not

275. 86 Va. App. 239, 258, 922 S.E.2d 544, 553 (2025).

276. *Id.* at 252, 922 S.E.2d at 550; VA. CODE ANN. § 18.2-248(H)(5) (2021), *amended by* 2025 Va. Acts ch. 394.

277. 86 Va. App. at 251–52, 922 S.E.2d at 550.

278. *Id.* at 255, 257, 922 S.E.2d at 551–53.

279. 85 Va. App. 196, 217, 916 S.E.2d 880, 890 (2025).

280. *Id.* at 202, 916 S.E.2d at 883.

281. *Id.* at 215, 916 S.E.2d at 889.

282. *Id.* at 211–12, 916 S.E.2d at 887.

283. *Id.* at 215–16, 916 S.E.2d at 889. The court also held that the evidence was sufficient to support Reed's conviction for possessing a firearm on school property, emphasizing that the driveway where Reed walked constituted school property. *Id.* at 211, 916 S.E.2d at 887.

284. 85 Va. App. 483, 496, 918 S.E.2d 286, 292 (2025).

define the term solicitation but held that the term should be given its ordinary meaning.[285] Accordingly, to satisfy the solicitation element, a defendant must "request, petition, or otherwise move" another individual to purchase them a firearm.[286] The court held that Smith solicited his girlfriend to purchase firearms when he accompanied her to a pawnshop, told her which firearms to purchase, showed her pictures of the firearms, and then remained in the car while she went inside the shop and purchased the firearms.[287]

3. Sexual Offenses

In *Holley v. Commonwealth*, the Court of Appeals of Virginia held that the evidence was insufficient to support a violation of Code of Virginia section 18.2-374.3(B).[288] The court noted that "[section] 18.2-374.3(B) prohibits the use of a communications device for the purposes of procuring or promoting the use of a minor for any activity in violation of [sections] 18.2-370 or 18.2-374.1."[289] The court found that "[section] 18.2-374.3(B) adopts both [section] 18.2-370 and [section] 18.2-374.1 (along with their terms) by specific reference," including the applicable age limits of the minor.[290] As the minor was sixteen years old at the time of the communication, and section 18.2-370(A) limits its application to a child under the age of fifteen, the court found that the trial court erred in convicting Holley under section 18.2-374.3(B).[291]

In *Atkins v. Commonwealth*, the Court of Appeals held that the evidence was insufficient to support Atkins's conviction for attempted incest with his granddaughter.[292] There, Atkins asked his adult granddaughter to have sexual intercourse with him.[293] After

285. *Id.* at 493–94, 918 S.E.2d at 291; VA. CODE ANN. § 18.2-308.2:2(N) (Cum. Supp. 2026).

286. 85 Va. App. at 494, 918 S.E.2d at 291.

287. *Id.* at 495, 918 S.E.2d at 292. The court rejected Smith's argument that he did not solicit his girlfriend because "she did not receive any[thing] . . . in return for purchasing the firearms." *Id.* at 495–96, 918 S.E.2d at 292. The court held that the plain language of the statute did not require a "quid pro quo." *Id.* at 496, 918 S.E.2d at 292; § 18.2-308.2:2(N).

288. 86 Va. App. 216, 224–25, 922 S.E.2d 532, 537 (2025); § 18.2-374.3(B) (Cum. Supp. 2026).

289. 86 Va. App. at 224, 922 S.E.2d at 537 (quoting § 18.2-374.3(B)) (internal quotation marks omitted).

290. *Id.* at 224–25, 922 S.E.2d at 537; § 18.2-374.3(B).

291. 86 Va. App. at 224–25, 922 S.E.2d at 537.

292. 85 Va. App. 542, 549–50, 918 S.E.2d 749, 752 (2025).

293. *Id.* at 545–46, 918 S.E.2d at 750–51.

the granddaughter said no, Atkins tried to persuade her by offering her money and threatening to withhold financial support.[294] The court of appeals acknowledged that the evidence clearly demonstrated Atkins's intent to have sexual intercourse with his granddaughter.[295] However, the court held that Atkins did not commit an overt act "that went beyond mere preparation and [began] the execution of the crime."[296] The court emphasized that Atkins did not remove his clothing, touch his granddaughter, or make any other movements to initiate sex.[297] Because the Commonwealth failed to demonstrate an overt act, the court reversed Atkins's conviction.[298]

4. Misdemeanor Abuse or Neglect of a Vulnerable Adult

In *Fergeson v. Commonwealth*, the Supreme Court of Virginia affirmed Fergeson's conviction for misdemeanor abuse or neglect of a vulnerable adult.[299] There, two bystanders noticed Fergeson crouched over his girlfriend, the victim, who was suffering from a drug overdose.[300] Fergeson told the bystanders not to call 911, but they did so anyway.[301] Fergeson falsely told the 911 operator that the victim was breathing normally and kept the bystanders away from her despite the operator's instructions to begin performing CPR.[302] Paramedics began mechanically-assisted breathing on the victim and transported her to the hospital, where she received an intravenous Narcan drip.[303] Fergeson argued that the victim was not a vulnerable adult because she did not have a chronic condition.[304] The supreme court rejected this argument and held that the focus is on the impairment of the adult, not the duration of the impairment.[305] The court emphasized the severity of the drug overdose and found that the victim was a vulnerable adult because of

294. *Id.* at 546–47, 918 S.E.2d at 751.
295. *Id.* at 549, 918 S.E.2d at 752.
296. *Id.*
297. *Id.*
298. *Id.* at 549–50, 918 S.E.2d at 752.
299. __ Va. __, __, 928 S.E.2d 545, 547 (2026).
300. *Id.*
301. *Id.*
302. *Id.*
303. *Id.*
304. *Id.* at __, 928 S.E.2d at 550.
305. *Id.* at __, 928 S.E.2d at 551.

her critical condition.[306] Accordingly, the court held that the evidence was sufficient to support Fergeson's conviction.[307]

5. Disarming a Law Enforcement Officer

In *Vitasek v. Commonwealth*, the Court of Appeals of Virginia affirmed Vitasek's conviction for disarming a law enforcement officer.[308] Officers approached Vitasek in a convenience store, attempted to arrest him on an outstanding warrant, and a five-minute struggle ensued.[309] At one point, an officer removed his taser and moved it towards Vitasek.[310] Vitasek grabbed the taser with both of his hands.[311] While the officer still had one hand on the taser, Vitasek turned the taser towards the officer and placed it on the officer's arm, releasing an electric current.[312] In response, the officer threw the taser to the back of the store.[313] The court of appeals held that the officer was deprived of the use of the taser, as required by Code of Virginia section 18.2-57.02, when Vitasek gained sufficient control of the taser and used it to tase the officer.[314]

6. Impersonating a Police Officer

In *Hughes v. Commonwealth*, the Court of Appeals of Virginia affirmed Hughes's conviction for impersonating a police officer.[315] In its analysis, the court addressed whether Hughes satisfied the privileges clause of Code of Virginia section 18.2-174; specifically, whether Hughes "falsely exercise[d] the privileges incident to one's position as a [police] officer."[316] The court held that Hughes

306. *Id.* at __, 928 S.E.2d at 550–51.

307. *Id.* at __, 928 S.E.2d at 551.

308. 86 Va. App. 475, 484, 924 S.E.2d 655, 659 (2026).

309. *Id.* at 484–85, 924 S.E.2d at 659.

310. *Id.* at 485, 924 S.E.2d at 660.

311. *Id.* at 485–86, 924 S.E.2d at 660.

312. *Id.* at 486, 924 S.E.2d at 660.

313. *Id.*

314. *Id.* at 496–97, 924 S.E.2d at 665; VA. CODE ANN. § 18.2-57.02 (2021). The court also held that the evidence was sufficient to support Vitasek's conviction for felon in possession of a weapon because Vitasek "gained actual possession of the taser, albeit briefly." 86 Va. App. at 493–94, 924 S.E.2d at 663–64.

315. 87 Va. App. 536, 564, 928 S.E.2d 887, 900 (2026).

316. *Id.* at 551, 928 S.E.2d at 894 (quoting Morgan v. Commonwealth, 73 Va. App. 512, 525, 863 S.E.2d 19 (2021)) (internal quotation marks omitted); § 18.2-174 (Cum. Supp. 2026).

satisfied the clause's actus reus requirement when he equipped his minivan with red and blue lights and activated them, causing a woman to pull over on the side of the road.[317] The court declined to decide whether the privileges clause required a specific intent to deceive.[318] Instead, the court reasoned that even if the clause contained a specific intent requirement, Hughes's statement to the woman that he just "wanted to see if it would work," demonstrated such intent.[319] Accordingly, the evidence was sufficient to support Hughes's conviction.[320]

7. Contempt

In *Orndoff v. Commonwealth*, the Supreme Court of Virginia reversed Orndoff's conviction for summary contempt.[321] Orndoff was called as a witness to testify against her boyfriend at his jury trial for felony assault and battery.[322] During Orndoff's testimony, she referenced her boyfriend's arrest history.[323] Defense counsel objected to the statement and informed the trial court that the parties had agreed not to discuss the boyfriend's arrest history.[324] The trial court instructed Orndoff to listen to counsel's questions and only answer what was asked.[325] Orndoff continued to reference her boyfriend's arrest history, and the trial court remarked that she appeared to be under the influence.[326] Orndoff explained that she recently stopped taking psychiatric medications and that, without them, she was very anxious.[327] Upon further questioning by the trial court, Orndoff admitted that she smoked marijuana before driving to court.[328] The trial court held Orndoff in summary contempt for testifying while voluntarily intoxicated.[329]

317. 87 Va. App. at 556–57, 562, 928 S.E.2d at 897, 900.
318. *Id.* at 558–59, 928 S.E.2d at 898.
319. *Id.* (internal quotation marks omitted).
320. *Id.* at 559, 928 S.E.2d at 898. The court also found that the evidence was sufficient to support Hughes's conviction for assault and battery where he reached inside the vehicle and hugged the woman. *Id.* at 562–64, 928 S.E.2d at 900.
321. 304 Va. 419, 438, 920 S.E.2d 305, 315 (2025).
322. *Id.* at 424, 920 S.E.2d at 307–08.
323. *Id.* at 424, 920 S.E.2d at 308.
324. *Id.* at 424–25, 920 S.E.2d at 308.
325. *Id.* at 425, 920 S.E.2d at 308.
326. *Id.*
327. *Id.*
328. *Id.* at 426, 920 S.E.2d at 308.
329. *Id.*

The supreme court later held that the evidence was insufficient to support Orndoff's conviction.[330] The supreme court first emphasized the trial court's statement that it did not rely on Orndoff's admission to smoking marijuana when finding her in contempt because it was unreliable.[331] The supreme court noted that it was "bound by this credibility determination," and as such, it could not consider the admission.[332] The supreme court further held that the trial court's factual findings—that Orndoff was in an "almost prone" position and nearly fell out of her chair while testifying—was contradicted by the video recording.[333] The supreme court reversed Orndoff's conviction because the evidence failed to demonstrate that her behavior was the result of voluntary intoxication.[334]

In *Ford v. Commonwealth*, the Court of Appeals of Virginia interpreted the meaning of the word "witness" under Code of Virginia section 18.2-456(A)(2), the summary contempt statute.[335] At a child support hearing, Ford told her ex-husband's new wife, "They'll never find your body."[336] Ford was subsequently convicted of summary contempt for making threats of violence to a witness.[337] The court of appeals found that the term "witness," as used in section 18.2-456(A)(2), was ambiguous.[338] The court of appeals held that a person qualifies as a witness under the statute if he "is testifying, has testified, or is or was reasonably expected by a party to testify in a proceeding before a court."[339] The court reversed Ford's conviction because her ex-husband's new wife did not qualify as a witness under this definition; she was merely a spectator at the child support hearing.[340]

330. *Id.* at 438, 920 S.E.2d at 315.
331. *Id.* at 434–35, 920 S.E.2d at 313–14.
332. *Id.* at 435, 920 S.E.2d at 314.
333. *Id.* at 437, 920 S.E.2d at 314.
334. *Id.* at 438, 920 S.E.2d at 315–16.
335. 86 Va. App. 41, 45, 920 S.E.2d 341, 343 (2025); VA. CODE ANN. § 18.2-456(A)(2) (Cum. Supp. 2026).
336. 86 Va. App. at 45, 920 S.E.2d at 343–44.
337. *Id.* at 45–46, 920 S.E.2d at 344.
338. *Id.* at 50, 920 S.E.2d at 346; § 18.2-456(A)(2).
339. 86 Va. App. at 52, 920 S.E.2d at 347.
340. *Id.* at 53, 920 S.E.2d at 347–48.

8. Driving Offenses

In *Glover v. Commonwealth*, the Court of Appeals of Virginia affirmed Glover's conviction for driving on a revoked license.[341] In 2012, Glover was convicted of DUI manslaughter and his license was revoked; Glover was later charged in 2022 with driving on a revoked license.[342] Glover argued that the evidence was insufficient to support his conviction because, at the time of the offense, the revocation was no longer in effect.[343] The court of appeals analyzed Code of Virginia section 46.2-391 and noted that subsection B requires the DMV to revoke a defendant's license after a conviction for DUI manslaughter.[344] The court noted that under subsection C, a defendant may petition a trial court to restore the revoked license five years after the date of the conviction.[345] The court emphasized that restoration is not automatic as the trial court has the discretion to grant or deny the request.[346] Contrary to Glover's assertion, his period of revocation did not automatically expire five years after the date of his DUI manslaughter conviction.[347] Accordingly, the evidence was sufficient to establish that Glover was driving on a revoked license in 2022.[348]

In *Commonwealth v. Richerson*, the Supreme Court of Virginia reversed the judgment of the Court of Appeals of Virginia and reinstated Richerson's conviction for driving under the influence.[349] The supreme court held that the court of appeals improperly reweighed the evidence when it concluded that Richerson's behavior could have been explained by fatigue or nervousness.[350] The supreme court held that the totality of the circumstances—which included Richerson's glassy eyes, slurred speech, sweating, confusion, aversion to eye contact, and the odor of alcohol from his

341. 85 Va. App. 400, 407, 917 S.E.2d 571, 574 (2025).
342. *Id.* at 402, 917 S.E.2d at 572; § 18.2-36.1 (2021) (codifying DUI manslaughter).
343. 85 Va. App. at 403, 917 S.E.2d at 572.
344. *Id.* at 405, 917 S.E.2d at 573; § 46.2-391(B) (Cum. Supp. 2026).
345. 85 Va. App. at 406, 917 S.E.2d at 573–74.
346. *Id.* at 406, 917 S.E.2d at 574.
347. *Id.* at 407, 917 S.E.2d at 574.
348. *Id.*
349. __Va. __, __, 928 S.E.2d 412, 417–18 (2026).
350. Richerson v. Commonwealth, No. 0493-24-3, 2025 Va. App. LEXIS 3, at *14–15 (Jan. 7, 2025).

breath—supported the trial court's finding that Richerson was under the influence of alcohol while he was operating his vehicle.[351]

II. LEGISLATION

A. *Court of Appeals*

The General Assembly expanded the number of judges on the Court of Appeals of Virginia from seventeen to twenty-one judges.[352] Now, the only circumstances under which the court may sit en banc are upon the court's own motion or upon a petition of any party, if "a majority of the court determines that it is appropriate to do so."[353]

B. *Bond*

The General Assembly amended Code of Virginia section 19.2-123 to remove the provision stating that a defendant who has a prior felony conviction or is currently on probation may only be released upon a secured bond.[354]

C. *Search Warrants*

The General Assembly amended Code of Virginia section 19.2-56 to provide that, when searching a place of abode, a copy of a search warrant affidavit shall not be given or left as otherwise provided in the statute if the affidavit has been sealed.[355]

D. *Competency*

Trial courts now have discretional authority in misdemeanor cases, where the defendant is found to be incompetent, to dismiss the charges and release the defendant without attempting restoration services.[356]

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351. *Id.* at __, 928 S.E.2d at 416–17.

352. 2026 Va. Acts ch. 615 (codified as amended at VA. CODE ANN. § 17.1-400 (Cum. Supp. 2026)).

353. 2026 Va. Acts ch. 615 (codified as amended at § 17.1-402 (Cum. Supp. 2026)).

354. 2026 Va. Acts ch. 123 (codified as amended at § 19.2-123 (Cum. Supp. 2026)).

355. 2026 Va. Acts ch. 203 (codified as amended at § 19.2-56 (Cum. Supp. 2026)).

356. 2026 Va. Acts ch. 502 (codified as amended at § 19.2-169.2 (Cum. Supp. 2026)).

E. *Discovery*

The Commonwealth is now required to provide "a copy of any relevant police report[s]" to a defendant who is facing criminal charges in general district court, upon their request.[357] The Commonwealth must furnish the reports at least ten days before the date the case is set for trial or a preliminary hearing.[358]

F. *Drug Offenses*

The General Assembly added various new chemicals to Schedule I of the Drug Control Act.[359] The General Assembly also amended Code of Virginia section 18.2-264 to include fingernail polish, model airplane glue, nitrous oxide, and other chemicals in the definition of "[n]oxious chemical substances."[360] The General Assembly made it unlawful, with certain exceptions, to sell a device intended to deliver nitrous oxide through direct inhalation, to sell nitrous oxide with certain tastes or smells, or to sell a container of nitrous oxide that exceeds eight grams.[361]

The General Assembly enacted Code of Virginia section 19.2-303.03, to establish a sentence modification hearing process for defendants who committed certain marijuana-related offenses prior to July 1, 2021—the date when Virginia legalized the cultivation and possession of marijuana.[362] The court that convicted the defendant is required to schedule a hearing by January 1, 2027, and to modify the defendant's sentence unless the Commonwealth demonstrates that such modification would be incompatible with the public interest.[363]

G. *Firearm Offenses*

It is now a Class 1 misdemeanor for a person younger than twenty-one years of age to purchase a handgun or an assault

357. 2026 Va. Acts chs. 562 & 982 (codified at § 19.2-264.15 (Cum. Supp. 2026)).
358. *Id.*
359. 2026 Va. Acts ch. 171 (codified as amended at § 54.1-3446 (Cum. Supp. 2026)).
360. 2026 Va. Acts ch. 191 (codified as amended at § 18.2-264 (Cum. Supp. 2026)).
361. *Id.*
362. 2026 Va. Acts chs. 1103 & 1104 (codified at § 19.2-303.03 (Cum. Supp. 2026)).
363. *Id.*

firearm.[364] With enumerated exceptions, it is also a Class 1 misdemeanor for a person younger than eighteen years of age to possess or transport a handgun or assault firearm.[365]

The General Assembly enacted Code of Virginia section 18.2-308.7:1 to require an individual who possesses a firearm inside a residence to store the firearm in a locked container or place a gun locking device on the firearm if the individual knows a minor or a person prohibited by law from possessing a firearm is present.[366] An individual who violates this new statute is guilty of a Class 2 misdemeanor.[367] The statute is not applicable to individuals carrying a firearm on their person or to antique firearms.[368] The statute further requires firearm dealers to post a notice detailing this law.[369]

It is now a Class 4 misdemeanor to leave a handgun in an unattended vehicle unless the handgun is stored in a locked hard-sided container.[370] Additionally, it is now a Class 1 misdemeanor to possess a firearm or dangerous weapon in a hospital that provides mental health services.[371] Of note, law enforcement officers are exempt from both of these statutes.[372]

The General Assembly amended Code of Virginia section 18.2-287.4 to prohibit carrying an assault firearm in public places.[373] The statute is not applicable to law enforcement, military personnel, or individuals lawfully hunting or at a shooting range.[374]

It is now a Class 1 misdemeanor to import, manufacture, sell, transfer, or purchase an assault firearm, and anyone convicted of such offense is prohibited from purchasing, possessing, or transporting a firearm for three years.[375] Additionally, it is now a Class 1 misdemeanor to import, sell, barter, transfer, or purchase a

364. 2026 Va. Acts ch. 1102 (codified as amended at § 18.2-308.7 (Cum. Supp. 2026)).
365. *Id.*
366. 2026 Va. Acts ch. 1074 (codified at § 18.2-308.7:1 (Cum. Supp. 2026)).
367. *Id.*
368. *Id.*
369. *Id.*
370. 2026 Va. Acts ch. 560 (codified at § 18.2-308.7:1).
371. 2026 Va. Acts ch. 1108 (codified at § 18.2-283.3 (Cum. Supp. 2026)).
372. *Id.*; 2026 Va. Acts ch. 560.
373. 2026 Va. Acts ch. 1101 (codified as amended at § 18.2-287.4 (Cum. Supp. 2026)).
374. *Id.*
375. 2026 Va. Acts chs. 1106 & 1107 (codified at §§ 18.2-287.4:1, -308.1:9 (Cum. Supp. 2026), and codified as amended at § 18.2-308.2:5 (Cum. Supp. 2026)).

magazine capable of holding more than fifteen rounds of ammunition.[376]

The General Assembly enacted Code of Virginia section 18.2-308.5:2, which criminalizes the manufacture, sale, and possession of ghost guns—firearms that lack serial numbers.[377] A first violation of the statute is a Class 1 misdemeanor, and a subsequent violation is a Class 4 felony.[378]

It is now a Class 1 misdemeanor to possess a firearm within three years of the date of a conviction for simple assault or assault and battery committed against a person selected because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, ethnicity, or national origin.[379] It is also now a Class 1 misdemeanor to purchase, possess, or transport a firearm, after having been convicted of misdemeanor assault and battery against an intimate partner.[380] An individual who is prohibited from possessing a firearm because he is subject to a protective order or has been convicted of assault and battery of a family or household member may no longer relinquish his firearms by transferring them to an individual under the age of twenty-one or an individual who lives with him.[381]

H. *Sexual Offenses*

The General Assembly added obscene images to the types of images covered by the sexual extortion statute.[382] It also created express liability for attempted sexual extortion where a threat is made, but the complaining witness does not engage in the acts specified.[383] The General Assembly further added obscene images to the types of images that are unlawful to create of another person, under Code of Virginia section 18.2-386.1.[384]

376. 2026 Va. Acts chs. 1106 & 1107 (codified at § 18.2-309.1 (Cum. Supp. 2026)).
377. 2026 Va. Acts ch. 532 (codified at § 18.2-308.5:2 (Cum. Supp. 2026)).
378. *Id.*
379. 2026 Va. Acts ch. 1084 (codified as amended at § 18.2-308.2 (Cum. Supp. 2026)).
380. 2026 Va. Acts chs. 527 & 528 (codified as amended at § 18.2-308.1:8 (Cum. Supp. 2026)).
381. 2026 Va. Acts chs. 533 & 534 (codified as amended at §§ 18.2-308.1:4, -308.1:8 (Cum. Supp. 2026)).
382. 2026 Va. Acts ch. 539 (codified as amended at § 18.2-59.1 (Cum. Supp. 2026)).
383. *Id.*
384. *Id.* (codified as amended at § 18.2-386.1 (Cum. Supp. 2026)).

The General Assembly amended Code of Virginia section 18.2-374.4 to add "any obscene item or material" to the list of items an adult may not show to a child younger than thirteen years of age.[385] The statute was also amended to clarify that unlawful display requires a lascivious intent and to expand the definition of grooming video or materials.[386]

The General Assembly amended Code of Virginia section 18.2-361.1 to prohibit the arrest or prosecution of a minor for prostitution where, at the time of the offense, the minor was a victim of sex trafficking.[387]

I. *Suicide*

The General Assembly abolished the common-law crime of suicide.[388]

J. *DUI Offenses*

Any person charged with refusal to submit to a blood or breath test may now enter into an alcohol safety action program at any time prior to trial and may pre-qualify to have an ignition interlock installed on their motor vehicle.[389] Any installation period accrued prior to trial for the pending charge will count toward any period of ignition interlock subsequently ordered.[390] Additionally, an individual who has had their driver's license revoked is no longer required to wait five years before petitioning a circuit court to restore their license.[391] If the circuit court grants the petition, it must order that the individual install an ignition interlock system on their vehicle and that it remain for the duration of the five-year period.[392]

385. 2026 Va. Acts ch. 348 (codified as amended at § 18.2-374.4 (Cum. Supp. 2026)).
386. *Id.*
387. 2026 Va. Acts ch. 577 (codified as amended at § 18.2-361.1 (Cum. Supp. 2026)).
388. 2026 Va. Acts ch. 785 (codified at § 18.2-16.1 (Cum. Supp. 2026)).
389. 2026 Va. Acts ch. 1112 (codified as amended at § 18.2-268.3 (Cum. Supp. 2026)).
390. *Id.*
391. *Id.* (codified as amended at § 46.2-391 (Cum. Supp. 2026)).
392. *Id.*

K. *Election Manipulation*

The General Assembly amended Code of Virginia section 24.2-1007 to make it a Class 1 misdemeanor to solicit or accept money or anything of value in exchange for "another's decision to register or not register to vote."[393]

L. *Impersonating an Elected Official*

It is now a Class 3 misdemeanor to impersonate a local elected official "with [the] intent to defraud or obtain access, information, service, or [any]thing of value" or to "falsely assume or exercise the functions, powers, duties, and privileges incident to the office" of a local elected official.[394]

M. *Gift Card Crimes*

The General Assembly amended the existing provisions of law related to credit card offenses to add the offenses of gift card theft, gift card forgery, gift card fraud, and criminally receiving gift cards fraudulently obtained.[395]

N. *Trespass*

The General Assembly expanded the trespassing on public transportation statute to also cover emergency vehicles.[396]

O. *Failure to Appear*

The General Assembly created a list of mitigating circumstances that a court must consider when assessing whether a person willfully failed to appear, in violation of Code of Virginia section 19.2-128.[397] These circumstances include: "illness" or "injury," "unforeseen transportation problems," "an inability to obtain adequate [child] care," and "any affirmative steps taken . . . to communicate

393. 2026 Va. Acts ch. 909 (codified as amended at § 24.2-1007 (Cum. Supp. 2026)).

394. 2026 Va. Acts ch. 452 (codified at § 18.2-174.2 (Cum. Supp. 2026)).

395. 2026 Va. Acts ch. 196 (codified as amended at §§ 18.2-192, -193, -195, -197 (Cum. Supp. 2026)).

396. 2026 Va. Acts ch. 332 (codified as amended at § 18.2-160.2 (Cum. Supp. 2026)).

397. 2026 Va. Acts ch. 241 (codified as amended at § 19.2-128 (Cum. Supp. 2026)).

or remedy [the] failure to appear."[398] A court must also consider these mitigating circumstances during summary contempt proceedings for willfully failing to appear.[399]

P. *Deferred Disposition*

The General Assembly amended Code of Virginia section 19.2-303.4 to prohibit a trial court from ordering that a defendant's obligation to pay court costs and fees is a condition of a deferred disposition.[400] Additionally, a trial court may now issue a deferred disposition if an offense was caused by or related to a defendant's developmental disability.[401]

Q. *Probation*

The General Assembly amended Code of Virginia section 19.2-305 to prohibit a trial court from finding a defendant in breach of the terms of his probation for failing to pay fines or costs unless the trial court finds that the failure to pay was willful after notice to the defendant and his counsel.[402] If a trial court determines that a defendant is indigent, the court must presume that he is unable to pay fines and costs.[403]

The General Assembly also amended Code of Virginia section 19.2-304 to permit a trial court to decrease a defendant's period of supervised probation without the need for a hearing following a request from the Department of Corrections.[404] The Department is required to submit a request for termination for defendants who have been under supervised probation for a year if they have complied with all of their conditions of probation and pose a minimal risk to the community.[405]

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398. *Id.*
399. 2026 Va. Acts ch. 241 (codified as amended at § 18.2-456 (Cum. Supp. 2026)).
400. 2026 Va. Acts ch. 592 (codified as amended at § 19.2-303.4 (Cum. Supp. 2026)).
401. 2026 Va. Acts chs. 960 & 961 (codified as amended at § 19.2-303.6 (Cum. Supp. 2026)).
402. 2026 Va. Acts ch. 953 (codified as amended at § 19.2-305 (Cum. Supp. 2026)).
403. *Id.*
404. 2026 Va. Acts chs. 76 & 77 (codified as amended at § 19.2-304 (Cum. Supp. 2026)).
405. *Id.*

R. *Parole*

The General Assembly amended Code of Virginia section 53.1-165.1 to expand parole eligibility.[406] A defendant is now eligible to be considered for parole if they were sentenced by a jury between June 9, 2000, and January 1, 2005, for a felony offense committed on or after January 1, 1995, and they can prove that the jury was not instructed that parole was abolished.[407] Additionally, the General Assembly created discretionary parole criteria guidelines for the Parole Board to use when determining whether an individual should be released on parole.[408]

S. *Sentencing*

The General Assembly amended Code of Virginia section 19.2-262.01 to permit counsel to question jurors during voir dire regarding the potential punishment for the charged offenses, regardless of whether the jury will be sentencing the defendant.[409] Additionally, a defendant may now withdraw their request for jury sentencing "up until the commencement of the sentencing proceeding."[410]

Defendants who have been extradited from another state to Virginia now receive sentencing credit for the time they spent in confinement awaiting extradition.[411] In order to receive the credit, the conviction must be the "same act" that formed the basis for the extradition warrant.[412]

406. 2026 Va. Acts ch. 367 (codified as amended at § 53.1-165.1 (Cum. Supp. 2026)).

407. *Id.*

408. 2026 Va. Acts ch. 1085 (codified at § 53.1-151.1 (Cum. Supp. 2026)).

409. 2026 Va. Acts ch. 1036 (codified as amended at § 19.2-262.01 (2022)) (noting that this change will "not become effective unless reenacted by the 2027 Session of the General Assembly").

410. 2026 Va. Acts ch. 1036 (codified as amended at § 19.2-295 (2022)) (noting that this change will "not become effective unless reenacted by the 2027 Session of the General Assembly").

411. 2026 Va. Acts ch. 211 (codified as amended at § 53.1-187 (Cum. Supp. 2026)).

412. *Id.*