Overview

The Supreme Court of Virginia granted petitions for appeal in 3 case numbers, but 2 actual cases. There were cross-petitions for appeal in Canales v. Commonwealth, Record Nos. 230829 and 230934, both of which were granted on three assignments of error each. This is a probation revocation proceeding emanating out of Arlington. I'll probably do a deep dive of this case as we get closer to oral argument on the merits, as it is either going to affirm Arlington's current practice (and thus change all of the Commonwealth's practice in probation revocation hearings), or Arlington circuit court is going to have to seriously modify their practice.

The second case granted SCV review was McMullen v. Clarke, Record No. 240044. This is an appeal of a habeas corpus petition from Charles City County Circuit Court. I don't have much information on it, but because the SCV granted the petition, there must be some question to adjudicate. While Habeas cases may not seem pertinent to your practice, they are often about how trial counsel **should** comport themselves and what **not** to do or what advice **not** to give, even if deficient performance is not found.

The Court of Appeals published 2 opinions today. While one, City of Emporia v. County of Greensville, Record No. 0792-23-2, is relevant to our jurisdiction, it is a niche case of a locality failing to appropriately contribute to a shared system. The other is much more interesting from an appellate perspective.

In Newsome v. Com., Record No. 0686-23-1, the CAV took the opportunity to quote some interesting language from a recent Supreme Court of Virginia case overturning the CAV. In Garrick, (citation below), the SCV found that the CAV had not used the appropriate standard of review in evaluating the case. The SCV reminded the CAV that "the evidence, viewed under the appropriate appellate standard, was sufficient to allow a rational factfinder" to find Garrick guilty. I believe publishing Newsome was the CAV recognizing the SCV's recent reversal and incorporating its language into published precedent, allowing litigants to cite to a CAV case for the proposition, rather than citing to a reversal of the CAV.

The most interesting (legally) unpublished case is Hines v. Com., Record No. 0704-23-1, where the appellant was convicted of a charge that she could not be convicted of in the trial, but the CAV found no manifest injustice. Hines was charged with strangulation of her daughter's father, but the circuit court did not find sufficient evidence for strangulation and found Hines guilty of A&B but termed it A&B of a family member (Domestic A&B) at the request of the Commonwealth and without objection from Hines. This is not a lesser included charge and thus was error. However, because it was not preserved, Hines had to show manifest injustice, which would likely have occurred, if she had not conceded sufficient evidence for A&B and also testified that she and the victim had a child together. Therefore, the CAV properly found that the record contained sufficient evidence to convict Hines of A&B Domestic and thus the ends of justice exception did not apply. We'll see if the SCV overturn the CAV on this issue, but I doubt they will.

Published Decisions

Newsome v. Com., Record No. 0686-23-1: (O'Brien, J., writing for Huff and Athey, JJ.)
Sufficiency; Appropriate standard of review; Deference to trial court on video interpretation
A&B by mob conviction affirmed where a group of 15-20 surrounded a fight and stopped the victim from leaving. CAV reiterated the low bar of reviewing sufficiency claims in the wake of SCV reversal.

> Victim was celebrating her sister's birthday at a hotel in Norfolk. Around 2:30 am, victim left the hotel to get her mother from a nearby parking garage. 15-20 people were sitting together outside the hotel, including Newsome and his girlfriend (Brown). One of the members of the group catcalled the victim, but she ignored them. When the victim walked back (without her mother) to the hotel, the group "began acting rowdy." They surrounded the victim, and Brown attacked the victim. The victim tried to flee, but the group would not let her. The victim's sister and brother-in-law (Sturdivant) came outside and tried to stop the group. One of the group "hit [Sturdivant] in the face with a bottle," knocking him unconscious.
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> A jury convicted Newsome of disorderly conduct, participating in a riot, and A&B by a mob (initially charged with malicious wounding by mob). Newcome appealed, arguing that he was not a member of a mob nor did he "cause acts of violence or intended to cause inconvenience, annoyance, or alarm or recklessly created a risk thereof."
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> The CAV reiterated, "Appellate courts are not tasked with saying that the evidence does or does not establish the defendant's guilt beyond a reasonable doubt as an original proposition." (quoting Com. v. Garrick, ____ Va. ____, ____, 2024 Va. LEXIS 27, at *4 (2024) (cleaned up)). The CAV thus dispensed with each of Newsome's arguments in turn, finding that a rational factfinder could have concluded he was guilty of the charges.

City of Emporia v. County of Greensville, Record No. 0792-23-2: (AtLee, J., writing for Beales and Malveaux, JJ.)
Proportionate share of budget; Code § 15.2-3830; Motion craving oyer; Summary judgment; Statutory interpretation; De novo review; declaratory judgment
City required to pay proportional share of Sheriff's budget regarding communal actions and buildings, but not required to pay proportional share of law enforcement activities because City has new police department.

> The City of Emporia and Greensville County are comingled localities, with Emporia being a city of the second class inside the territorial boundaries of Greensville County. The City and County share a Clerk of the Circuit Court, Commonwealth's Attorney, and Sheriff's department, voted on by citizens of the City and the County. In 2021, City stopped paying towards the County Sheriff's budget, even though historically, the City had always done so. The City argued that

because it created a police department, it no longer needed to pay a proportionate share of the Sheriff's budget.

The County filed suit, and the City demurred and filed a motion craving oyer regarding documents related to Emporia's police department intermingled activities with the County Sheriff's department. The circuit court denied the motion craving oyer and sustained the demurrer, allowing the case to proceed to declaratory judgment. Summary judgment motions followed, and the circuit court ruled that the City had to pay a proportionate share of the entire budget of the Sheriff, stating "that's simply because that's the way the statute reads."

The CAV agreed with the City on the issue of statutory interpretation and found the circuit court erred in its interpretation of § 15.2-3830. The CAV stated the City only "must pay a proportionate share for those parts of the County Sheriff's budget that relate to the circuit court and the jointly used buildings." The CAV further found that the circuit court did not err in denying the motion craving oyer. The CAV remanded the case to determine for what costs the City is responsible.

Unpublished Decisions

Appelget, et al. v. Pig and Pearl BBQ, LLC, Record No. 0096-23-2: (Fulton, J., writing for Decker, CJ., and Ortiz, J.)
Fraudulent inducement; Breach of contract; Default judgment; Best and narrowest grounds; Judicial restraint
Judgment allowing rescission of contract reversed where the remedy was not appropriate to the breach of contract and Defendant had waived the only appropriate remedies.

Appelget's LLC (2053 W. Broad Street, LLC) owned the building located at the namesake of the LLC. A prior tenant was evicted, and the tenant relinquished ownership of the restaurant equipment that was in the building to satisfy a judgment. Appelget and his wife planned to open a restaurant in the space and contacted Sethna, an acquaintance, to invest. Sethna "claimed to be an expert in operating restaurants."

The Appelgets agreed "to contribute anything that was necessary so that a fully functioning restaurant was there on day one," and the parties valued this contribution at $200,000. Sethna was supposed to contribute $100,000 cash in startup capital. The three created a new LLC titled "2053 W. Broad Street Restaurant and Bar, LLC" (Restaurant LLC), and Sethna signed the operating agreement as representative of Pig and Pearl BBQ LLC. The business began to fall apart immediately, with Sethna not being properly apprised of the financials and the Appelgets allegedly making "improper distributions of Restaurant LLC's assets."

Sethna sued as Pig and Pearl BBQ LLC. 5 survived to trial, including: fraud in the inducement, breach of contract x3, and an unjust enrichment claim. The circuit

court dismissed the non-breach of contract claims and the breach of contract claim based on good faith and fair dealing. The circuit court also granted default judgment against 2053 W. Broad Street, LLC and not Restaurant LLC. The circuit court entered judgment for Pig and Pearl BBQ LLC on the other two breach of contract claims and granted the relief sought "rescission of the contract" and return of Sethna's $100,000 investment.

The CAV reversed in part and affirmed in part. First, the CAV found that the circuit court's default judgment against 2053 W. Broad Street, LLC was a scrivener's error and that the request for default judgment was clearly for Restaurant LLC. The CAV also found that the circuit court's finding that the restaurant was profitable "was clearly erroneous." Finally, the CAV affirmed that withholding access to the financial information was a breach but found that Pig and Pearl LLC had "abandoned any appropriate remedy" to its only valid breach of contract claim on appeal. Therefore, the CAV reversed.

Getachew v. Com., Record No. 0341-23-4: (White, J, writing for Chaney, J., and Annunziata, SJ.)
DUI; Admissibility of evidence; Same-evidence doctrine; Substantial compliance; Confrontation clause; Testimonial statement; Jury instructions; Approbate and reprobate
Admission of COA affirmed even where nurse didn't testify regarding blood draw, in part because Defendant admitted evidence of BAC in case-in-chief, invoking the same-evidence doctrine. Approbate and reprobate doctrine applied where Defendant did not object to large portion of a jury instruction.

Officer Medeiros observed a BMW driving with two flat tires going the wrong way on a one-way street. After stopping the vehicle, Medeiros identified Getachew as the driver and sole occupant, observing odor of alcohol, bloodshot and watery eyes, slurred speech, and instability. Getachew admitted to drinking and performed poorly on the SFSTs. Medeiros executed a search warrant for Getachew's blood (Covid stopped her from getting a breath test). Nurse Devine drew the blood in Medeiros's presence, and Dr. Schneider from DFS confirmed Getachew's BAC was 0.192. Getachew obtained a second analysis from Carrol Nanco, who presented a BAC of 0.16.

At trial, Medeiros testified that she obtained a search warrant for Getachew's blood, and Getachew objected on best evidence grounds that the search warrant needed to be admitted into evidence. The circuit court disagreed and overruled the objection. Devine did not testify, and Getachew objected to the admissibility of the COA with the sticker from the blood draw kit with Devine's writing on it that stated she was an individual who properly performed the blood draw. The circuit court overruled this objection and admitted the COA and Schneider's testimony. Subsequently, Getachew presented Nanco's BAC in his case-in-chief.

The CAV affirmed, neglecting to address several of Getachew's arguments on the merits because the same-evidence principle precluded appellate review. Under this doctrine, "when a litigant 'unsuccessfully objects to evidence that he considers

improper and then introduces on his own behalf evidence of the same character, he waives his earlier objection to the admission of that evidence.'" (quoting Isaac v. Com., 58 Va. App. 255, 260 (2011) (citation omitted)). The doctrine applies both civilly and criminally, "and affects evidentiary objections based on constitutional as well as statutory and common law grounds." Id.

The CAV found that even if there was error regarding Medeiros's testimony of the search warrant, it was harmless because the testimony was merely cumulative of the other evidence in the case. The CAV further found substantial compliance with §§ 18.2-268.5 through 268.7.

Finally, on the issue of the jury instruction the CAV found that Getachew was attempting to approbate and reprobate by not objecting to the entirety of the jury instruction.

Commentary: I understand the application of the approbate and reprobate doctrine here, but I don't know that I fully agree with its usage. In my brief on behalf of the Commonwealth, I argued that Rule 5A:18 was appropriate in this context because he failed to preserve an objection to the jury instruction. I believe that there should be distinctions between approbate and reprobate, the invited-error doctrine, and Rule 5A:18 lack of preservation. To that end, the strict preservation requirements of Rule 5A:18 operate within a narrower framework to affirm the judgment rather than utilizing the approbate and reprobate doctrine or the invited-error doctrine, which are themselves distinguishable from one another.

In this case, the CAV is saying that by moving to modify the instruction slightly, Getachew affirmed the rest of the language in the instruction, which then makes this case more of an approbate and reprobate case. At any rate, the failure to object will get your case affirmed because you have to present an argument to the trial court. Ultimately, whether it gets affirmed because you approbate and reprobate or because you failed to preserve under Rule 5A:18 doesn't matter.

Adkins v. King and Queen County DSS, Record No. 0354-23-2: (Beales, J., writing for AtLee and Malveaux, JJ.)
Termination of parental rights; § 16.1-283(B) and 283(C)(2); Best interests of the child; Alternative grounds doctrine
CAV affirmed termination of parental rights under § 16.1-283(C)(2) where father failed to remedy his drug abuse over the course of several years and demonstrated an inability or unwillingness to do so.

Adkins is biological father of I.A. DSS has been involved with the family since 2017 because of "physical neglect and abuse." I.A. was born "substance-exposed" in 2019. One of I.A.'s half-siblings overdosed in a suicide attempt in 2021, and a few days later committed suicide with a firearm, because "he was tired of the drugs, the hate, and the fighting." Adkins was incarcerated at this time. In a meeting with

DSS shortly after the suicide, Adkins admitted that mother had a drug problem and that Adkins had "a little problem with meth himself."

DSS made "level 1 findings for physical neglect" against mother and none against Adkins. The JDR court entered adjudications on the same, and the children entered foster care. Adkins had difficulty adjusting to DSS's requirements and treatment programs, testing positive for various narcotics over the years. Eventually, Adkins entered in-patient treatment and made positive steps, including conceding that he was not prepared to receive I.A. yet but wanted to improve his life to be able to. Adkins did not deliver on the promise, instead living with known narcotics users and a sex offender, and DSS initiated termination proceedings. The JDR court terminated, and the circuit court terminated.

The CAV affirmed, finding sufficient evidence for termination under § 16.1-283(C)(2), for unwilling to remedy the behavior and conditions which led to the foster care placement.

Hilton v. King and Queen County DSS, Record No. 0379-23-2: (Beales, J., writing for AtLee and Malveaux, JJ.)
Termination of parental rights; § 16.1-283(B) and 283(C)(2); Best interests of the child; Alternative grounds doctrine
CAV affirmed termination of parental rights under § 16.1-283(C)(2) where mother failed to remedy her drug abuse over the course of several years and demonstrated an inability or unwillingness to do so.

Hilton is biological mother of I.A. and J.F. DSS has been involved with the family since 2017 because of "physical neglect and abuse." I.A. was born "substance-exposed" in 2019. In 2020, J.F.'s school reported that J.F. "was lethargic" and "had a low pulse rate." Hilton admitted she gave him 6 milligrams of melatonin "which resulted in J.F.'s hospitalization. One of I.A.'s half-siblings overdosed in a suicide attempt in 2021, and a few days later committed suicide with a firearm, because "he was tired of the drugs, the hate, and the fighting." Hilton admitted that the firearm used was most likely her brother's and that she had been using non-prescribed Percocet during this time.

DSS made "level 1 findings for physical neglect" against Hilton. The JDR court entered adjudications on the same, and the children entered foster care. Over the next few years, Hilton failed to address her behaviors and could not finish the requirements of DSS, testing positive for various narcotics over the years. DSS initiated termination proceedings. The JDR court terminated, and the circuit court terminated.

The CAV affirmed, finding sufficient evidence for termination under § 16.1-283(C)(2), for unwilling to remedy the behavior and conditions which led to the foster care placement.

Valderama v. Com., Record No. 0385-23-3: (Beales, J., writing for O'Brien and Raphael, JJ.)
Admissibility of evidence; Chain of custody; Certificate of analysis; Sufficiency; Confidential informant
PWID Sch. I/II conviction affirmed where the CAV reviewed "the clearest video surveillance of a drug transaction" of an undercover/controlled buy.

> An undercover narcotics investigation was set up with a Confidential Informant. Officers met with the CI, and the CI called Valderama to purchase "two ounces of methamphetamine." Officers searched the CI's person, as well as his vehicle, and gave him $1600 to purchase the meth. Officers also set up recording devices on the CI prior to the controlled purchase. The CI purchased the meth, and, during the transaction, Valderama told the CI that Valderama would call the CI later about "a kilo of cocaine." Officers collected the meth and delivered it to a secured evidence locker before it was finally taken to DFS for analysis, confirming it as 56.845 grams of meth.
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> At trial, Valderama contested the admissibility of the evidence because the CI could have had the meth on his person prior to the transaction. Further, Valderama argued that the CI might have concealed drugs elsewhere in the car prior to the transaction. The circuit court stated that this was "an airtight case on behalf of the Commonwealth" and "this was the clearest video surveillance of a drug transaction that I have ever seen." The circuit court rejected Valderama's theories and found him guilty.
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> The CAV affirmed, reiterating that the admissibility of evidence, particularly on chain of custody, is reviewed for abuse of discretion. Because the Commonwealth demonstrated reasonable assurance that the evidence was the same as obtained from the CI/Valderama, there was no abuse of discretion in admitting the evidence. Given the evidence, a rational factfinder could conclude Valderama was guilty.

Brown v. Com., Record No. 0573-23-2: (Beales, J., writing for Callins, J., and Clements, SJ.)
Submitting on brief; Jury instructions
Murder and wounding convictions affirmed where there was no evidence presented to warrant an instruction of heat of passion or provocation, when the victims did not have weapons and at least one was shot in the back as they were walking away.

> Jones, Waekuon, and Pope went to a party. Jones and Waekuon were separated from Pope when Pope punched his own girlfriend (Johnson) in the face. Bonner, Brown, and Rivers went to find Pope to tell him to leave. "A swarm of people approached" Jones asking where Pope was. Jones said he did not know where Pope was during the party, and someone said, "F that" and started shooting. Witnesses stated 5 or 6 shots were fired. Bonner testified that "Rivers and Brown 'just got to shooting out there.'" Jones was shot in the stomach and elbow, surviving with significant injuries. Waekuon was shot in the back and died.

Deputies arrived and collected two firearms from Pope and five shell casings on the ground. Pope testified that he retrieved his firearms after the shots were fired and that he had called 911 because of the gunshots. DFS confirmed that 2 casings were fired from one firearm and three from another. Pope's firearms did not fire any of the casings.

At the trial, Brown proposed a jury instruction on voluntary manslaughter due to provocation or heat of passion. The circuit court denied the instruction, finding no evidence on either of those issues. The jury convicted Brown of first-degree murder, aggravated malicious wounding, and use of a firearm x2.

The CAV affirmed, finding that there was no evidence that Waekuon had done anything other than use words against Brown. Waekuon was not involved in the physical altercation between Pope and Johnson, and Pope "had already left the party and was down the street when the shooting occurred." The evidence also demonstrated that Waekuon was shot in the back and did not have a firearm, so Waekuon did not pose a physical threat to Brown.

Mugynei v. Com., Record No. 0607-23-1: (Fulton, J., writing for O'Brien and Huff, JJ.)
Sufficiency; Cross-examination; Case-in-chief
Voluntary manslaughter conviction affirmed and limitation on cross-examination warranted because Defendant had a right to call the witness in his case-in-chief and elicit the excluded testimony. Sufficient evidence for a rational factfinder to conclude that Defendant caused the injuries.

Emergency services responded to Mugynei's residence and found that R.N., Mugynei's 2-year-old child, was not breathing. R.N. died, and in the autopsy, Dr. Kinnison found "several internal lacerations in [R.N.'s] abdomen and intestinal areas" as well as "significant internal bleeding." R.N. had "70 bruises and 100 abrasions" externally. Photographs "and physical evidence shoed red stains on pillows and [R.N.'s] clothing consistent with vomited blood."

Dr. Kinnison concluded that R.N. was killed by blunt force trauma. Dr. Clayton attended the autopsy and testified that this would be caused by force similar "to a car collision or falling from several stories of elevation." R.N. would have displayed significant symptoms that "a prudent caregiver would have noticed."

Mugynei admitted that he "played rough" with R.N. and that R.N. "played rough" in general. Mugynei admitted that the night before R.N. died, R.N. vomited several times after "wrestling" with Mugynei. Mugynei stated that "he may have kneed R.N. while wrestling" then changed his story to be "an elbow drop" before again stating that he had kneed R.N. R.N. first vomited 30 minutes after the "wrestling" stopped then twice later that night. Mugynei admitted that he did not want to take R.N. to the hospital because he did not want to be accused of abuse. Mugynei admitted to "whipping" R.N. as punishment and had "accidentally struck R.N.'s scrotum" during a whipping.

During trial, Mugynei attempted to question Cyntoria (R.N.'s maternal grandmother) about an incident "when R.N. burned his hand on a curling iron while in [Mother's] care." The circuit court sustained the Commonwealth's objection as being outside the scope of direct examination. Mugynei was convicted of voluntary manslaughter and felony child abuse.

The CAV found that the circuit court's decision to limit Mugynei's cross-examination was not an abuse of discretion. The question was not relevant to the instant period of potential abuse. The question further did not go to bias or lack of honesty because Cyntoria testified that Mother was not a good caregiver, either. So, it was simply consistent with Cyntoria's testimony. The CAV reiterated that Mugynei was entitled to call Cyntoria as a witness and question her as to the incident in his case-in-chief, but "he chose not to do so."

The CAV also found sufficient evidence for a rational factfinder to conclude Mugynei was guilty. Mugynei's multiple conflicting statements could have been found by a rational factfinder to be lies to conceal guilt. The circumstantial evidence did not support Mugynei's assertions that R.N. was uninjured, and sufficient evidence existed to find that Mugynei caused the injuries.

Martinez v. Com., Record No. 0631-23-4: (Chaney, J., writing for O'Brien and AtLee, JJ.)
Inherent incredibility; Sufficiency
ASB convictions affirmed where inconsistent testimony was not inherently incredible.

I do not go into depth of the facts of this case, as they are largely irrelevant to the analysis. K.D. testified that between the ages of 6 and 8, she would visit her father in Fairfax on the weekends. K.D. testified that Martinez was often present during those visits, and Martinez "flirted with K.D. and blew kisses at her." K.D. testified that Martinez "repeatedly touched her private parts" numerous times, including her vagina and buttocks. K.D.'s testimony did have inconsistencies, and Martinez brought the inconsistencies to the jury's attention. Martinez was convicted of four counts of aggravated sexual battery.

The CAV affirmed, finding that K.D.'s testimony was not inherently incredible solely because of the inconsistencies. However, the jury was on notice of the inconsistencies of K.D.'s testimony and was able to evaluate her credibility. Testimony is only inherently incredible if "it is so contrary to human experience as to render it unworthy of belief." (quoting Lambert v. Com., 70 Va. App. 740, 759 (2019) (citation omitted)). Because K.D. testified to sufficient evidence to convict, and her testimony was not inherently incredible, there was no error in denying the motion to strike the evidence.

Williams v. Com., Record No. 0648-23-1: (White, J., writing for Huff and Malveaux, JJ.)
Admissibility of evidence; Forensic interviews; § 19.2-268.3; Hearsay; Rule 5A:18; § 19.2-268.2
ASB and indecent liberties convictions affirmed where forensic interview was admissible under § 19.2-268.3 and the circuit court properly conducted its analysis under that code section. No issue with hearsay under recent complaint doctrine.

> Ja and Jo were 8 years old and became acquainted with Williams and C, Williams's son who was the same age as Ja and Jo. Ja and Jo would go over to Williams's house and, in 2019, did so for an overnight visit. Ja was sleeping on the floor when "Williams reached under Ja's shorts and boxers and touched his penis." Ja pushed the hand away, and Williams did it again. Williams did the same thing with Jo. Ja and Jo reported the incident a few months later.
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> Catherine Tricomi, a forensic interviewer, conducted interviews of Ja and Jo separately. After the recorded interviews, Tricomi "noted that nothing stuck out to her in terms of their statements being inaccurate or falsified." The Commonwealth admitted the recorded interviews after a hearing pursuant to Code § 19.2-268.3. The jury convicted Williams of two counts of aggravated sexual battery and two counts of indecent liberties.
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> The CAV affirmed, finding that the circuit court did not err in admitting the recorded interviews under § 19.2-268.3 because the circuit court properly conducted an analysis to determine whether it found the recordings sufficiently reliable and the interview inherently trustworthy. The CAV rejected one of Williams's arguments because it was not presented to the circuit court, and he was precluded from raising it under Rule 5A:18. The CAV also found no abuse of discretion in admitting statements pursuant to the recent complaint doctrine under § 19.2-268.2.

Hines v. Com., Record No. 0704-23-1: (O'Brien, J., writing for Huff and Fulton, JJ.)
Rule 5A:18; Ends of justice exception; Manifest injustice
Even though Domestic A&B is not a lesser-included of strangulation, conviction affirmed because sufficient evidence in the record exists to convict Hines of Domestic A&B and objection was not properly preserved under Rule 5A:18.

> Hines appealed her conviction of Domestic A&B because it was not a lesser included charge of her initial indictment: Strangulation. At the trial, the circuit court found insufficient evidence for strangulation and found Hines guilty of A&B. The circuit court then "asked the parties, 'Assault and battery of a family member, or lesser included, or just assault and battery?'" The Commonwealth requested Domestic A&B, and Hines's counsel did not object.
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> Hines conceded that she did not preserve this argument under Rule 5A:18 and requested the CAV exercise the ends of justice exception. The Commonwealth also conceded that there was error in the circuit court's decision but argued that the ends

of justice were not met by reversing. The CAV agreed that the conviction was error but declined to exercise the ends of justice exception to Rule 5A:18.

"It is not enough for an appellant to merely assert a winning argument on the merits – for if that were enough, procedural default would never apply, except when it does not matter." (quoting Winslow v. Com., 62 Va. App. 539, 546 (2013) (citation omitted, cleaned up)). Because of this, an appellant must demonstrate manifest injustice "or a wholly inexcusable denial of essential rights." (quoting Holt v. Com., 66 Va. App. 199, 210 (2016) (en banc) (citation omitted)). This is generally when an appellant (1) "was convicted for conduct that was not a criminal offense" or (2) the record proves "that an element of the offense did not occur." (quoting id.).

Hines conceded that there was sufficient evidence to convict her of A&B. The CAV found that based on that concession, and her own testimony that Hines and the victim have a child together, the record presents sufficient evidence to convict Hines of the Domestic A&B.

City of Portsmouth, et al. v. Ayers, Record No. 0735-23-1: (Per Curiam Opinion: Fulton, Lorish, and White, JJ.)
Worker's compensation commission; Total disability; Rule 5A:18
Commission did not err in finding Ayers was owed total disability, temporary disability, and partial temporary disability due to a fall at work.

The CAV rejected Portsmouth's and PMA Management Corp, TPA's appeal without oral argument, finding it was "wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a). The CAV affirmed that Ayers was owed compensation because he "got hung up on debris at work while retrieving a tool and fell on his head and arm." Multiple doctors confirmed that the fall at work caused his injuries or exacerbated pre-existing conditions to the point that the fall was the proximate cause of his symptoms. Some of Appellants' arguments were barred by Rule 5A:18 for lack of preservation.

Brotherton v. Com., Record No. 0768-23-3: (Ortiz, J., writing for Friedman and White, JJ.)
Speedy trial; Admissibility of evidence; Sufficiency; Rule 5A:18
Speedy trial issue not properly preserved because Defendant did not move to dismiss case for alleged speedy trial violations. No issue of sufficiency on his convictions or admissibility of portions of medical records.

The CAV rejected Brotherton's appeal without oral argument, finding it was "wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a). Brotherton was convicted of aggravated malicious wounding, A&B against a protective order petitioner, strangulation, and abduction.

Brotherton and R.S. were married in 2017. R.S. obtained a protective order in August 2018. On November 17, 2018, Brotherton began drinking heavily, and R.S. made him dinner. Brotherton drove R.S. "all around the back roads" and began

yelling and shoving R.S. while he was driving, including pushing her out of the truck when they got home. R.S. tried to get away from him, but he shoved her, causing her to fall to the ground, breaking her humerus. After R.S. entered her apartment, "Brotherton grabbed her by the back of the head and smashed her face into the floor." Brotherton continued to threaten, strangle, and sexually assault R.S. R.S. suffered a broken nose, broken shoulder, and broken neck.

Brotherton contested the admissibility of R.S.'s medical records without entering "the complete record." The circuit court "allowed the Commonwealth to admit only the portions of the record that it considered relevant." The circuit court convicted Brotherton of the above charges.

The CAV affirmed because Brotherton's appellate claims of speedy trial violations were not properly preserved under Rule 5A:18. Brotherton never raised a motion to dismiss for speedy trial violations, and the CAV found that the exceptions to Rule 5A:18 were not applicable to Brotherton's case. The CAV found that the circuit court did not abuse its discretion in permitting the Commonwealth from admitting only the relevant portions of R.S.'s medical records. No issue on sufficiency, but the CAV conducted analyses of the malicious wounding and strangulation charges, finding that Brotherton was not contesting sufficiency on his other charges.

Ticonderoga Farms, LLC, et al. v. Knop et al., Record No. 1590-22-4: (AtLee, J., writing for O'Brien, J., and in part, Chaney, J. Chaney, J., dissented in part and concurred in part)
Judicial dissolution; Capital call; Declaratory Judgment; Disassociation
Dissolution of LLC affirmed because whether to disassociate members or dissolve an LLC is a fact-based analysis and thus owed extreme deference. Dissent on the issue of remedy because Judge Chaney believes disassociation the more appropriate remedy.

Peter Knop (Father) was majority member of Ticonderoga Farms, LLC, and his children, Alexandra and William were minority members. Father demanded a capital call on the LLC, and Children filed for declaratory judgment claiming Father could not demand the capital call and requested access to the financial records.

Children filed for dissolution, under Code § 13.1-1047(A). Father argued that the circuit court should "have granted his motion for disassociation of his children's" shares, pursuant to § 13.1-1040.1(5) rather than dissolved the LLC. Father also contested the circuit court's rulings on his motions to strike and for summary judgment. The circuit court found there was no valid claim for the capital call and that dissolution was appropriate if the LLC was not able to function.

The CAV affirmed the circuit court's decisions. First, dissolution and disassociation are factual determinations, and thus the circuit court's decision was owed the same deference as a jury verdict.

Dissenting in part, Judge Chaney found that the circuit court should have disassociated the Children from the LLC, likening the case to Dunbar Group, LLC

> v. Tignor, 267 Va. 361 (2004). The majority addressed this, stating that Dunbar dealt with only one member who was causing the deadlock for the LLC and that the circuit court found all members were at fault in the instant case. Judge Chaney argued that the majority misinterprets Dunbar. Judge Chaney was concerned that "minority members . . . persuaded a circuit court to disband a legally constructed and operating entity against the wishes of the majority member."

Arroyo v. Com., Record No. 1840-22-1: (Per Curiam Opinion: Athey, Ortiz, and Chaney, JJ.)
Speedy trial; Jury instructions; Heat of passion; Sufficiency
No speedy trial issue where Commonwealth not the source of delay. No evidence to support heat of passion or waterfall instruction on murder charges.

> The CAV rejected Arroyo's appeal without oral argument, finding it was "wholly without merit." Code § 17.1-403(ii)(a); Rule 5A:27(a). I do not delve into the facts because the CAV did not spend much time evaluating the sufficiency allegations.
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> The CAV rejected Arroyo's speedy trial argument because the circuit court ordered a mental health evaluation and subsequently was subjected to the judicial emergency caused by the COVID-19 pandemic. The CAV further found that Arroyo presented no scintilla of evidence to support his proffered jury instructions on heat of passion and lesser-included charges.

Muhammad v. Com., Record No. 1910-22-4: (Callins, J., writing for Beales and Friedman, JJ.)
Miranda; 5th Amendment Suppression; Admissibility of evidence; Chain of custody; Sufficiency; Jury instructions; 911 call; Probative value v. prejudice; Rule 5A:20; Rule 5A:18
Wounding and abduction convictions affirmed where there was no evidence that Defendant's will was overborne or his waiver was involuntary. 911 call admissible because it was not substantially more prejudicial than probative. Certificate of Analysis admissible because Commonwealth provided reasonably certain chain of custody. Proposed jury instruction on use of deadly force not appropriate where there wasn't a scintilla of evidence of accidental discharge of firearm.

> One of the victims, Washington, ended a relationship with Muhammad in 2019 and traveled to California for vacation. During her vacation, Muhammad repeatedly attempted to contact her. When Washington returned to work in Virginia, Muhammad continued to attempt to contact her before finally showing up at her workplace. Muhammad pulled a firearm out of his backpack and beat Washington with it, breaking her nose and causing her black eyes.
>
> The second victim, Germain, attempted to intervene before Muhammad pointed the gun at her, telling her to go back to her "motherfucking office." Germain complied, and Muhammad pointed the gun back near Washington and fired his gun into the floor. Washington ran to Germain's office, and Muhammad followed her, forcing his way into the office and ordering Germain into a chair. Muhammad continued to threaten Washington and Germain and gesticulating wildly with the firearm.

Officers responded to multiple 911 calls and 2 approached the office. Officers Clark and Giles approached with guns drawn and observed Muhammad pointing the gun at Washington. Clark yelled, "Drop the gun. Drop the gun." Clark, Giles, and Muhammad fired their guns. Washington was shot at least twice; Muhammad was shot multiple times, and officers rendered first aid to both. Clark's, Giles's, and Muhammad's firearms were collected and stored in evidence, as well as cartridge casings. Eventually, in 2020 and 2022 (just before trial), two bullets were retrieved from Washington's body by surgeons and handed directly to law enforcement.

After Muhammad was released from the hospital, about a week after the shooting, Muhammad was arrested and interviewed. Detectives advised Muhammad of his Miranda rights, and Muhammad agreed to speak with them. Muhammad complained of "excruciating pain," and the detectives told him that they could not give him pain medicine, but he would get some from the jail nurse as soon as he arrived at the jail. Muhammad repeatedly blamed Washington for the incident and that she was "playing around with [his] head." Muhammad admitted to much of the incident.

Muhammad moved to suppress the interview, arguing that his Miranda waiver was involuntary due to the extreme pain he felt during the interview, citing to Peterson v. Com., 15 Va. App. 486 (1992). The circuit court denied the motion to suppress, finding no involuntariness and specifically finding "that Muhammad is not a man that demonstrated he was in so much pain that his will was overborne.

At trial, Muhammad contested the admission of the 911 recording, the certificate of analysis, and McMaster's testimony regarding the analysis of the firearms. Specifically, Muhammad contested the transfer of the evidence from the locker to DFS because Ahn, the officer who transported the items, did not testify, but his name was on the RFLE which was admitted into evidence. Muhammad also proposed Instruction D, which explained and referenced newly enacted § 19.2-83.5, which outlines the permissive use of deadly force. The code section was not in effect at the time of the shooting. The circuit court denied the instruction, and the jury convicted Muhammad of aggravated malicious wounding, two counts of abduction, and use of a firearm in the commission of a felony.

The CAV found no evidence that Muhammad's will was overborne in the interview and distinguished Peterson easily, as Muhammad did not complain during the interview, only at the beginning when asked how he was feeling and then when Muhammad ended the interview. He moved around without issue or complaint and used his injured arm to gesture during his statements.

On the admissibility of other evidence, the CAV rejected Muhammad's argument regarding chain of custody. The CAV found that the RFLE and surrounding testimony presented reasonable certainty that the items collected were the same as the items tested. The CAV also conducted an analysis of the 911 call's probative vs. prejudicial nature as well as the hearsay nature and concluded there was no abuse

of discretion in admitting it, finding Muhammad's cumulative argument not preserved pursuant to Rule 5A:18.

Finally, the CAV reviewed Muhammad's sufficiency arguments, rejecting each of them in turn, finding sufficient intent and surrounding acts to convict Muhammad of abduction of Germain and aggravated malicious wounding of Washington.