

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 13th day of February, 2015.*

Bradley Alan Mowbray, Appellant,

against Record No. 140735
Court of Appeals No. 0707-13-3

Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of
counsel for the appellee, the Court is of opinion that there is
error in the judgment of the Court of Appeals.

At around midnight on July 5, 2012, Larry Davis ("Davis")
arranged to meet with Morgan Brown ("Brown") at a grocery store to
facilitate the mutual return of some items. When Brown arrived,
she parked to the left of Davis' vehicle. After the items had been
returned, Davis noticed Donald Nagy ("Nagy") and Bradley Alan
Mowbray ("Mowbray") in the backseat of Brown's car. Nagy was upset
with Davis because Nagy had been in a fight with Davis' sons the
day before.

Nagy and Mowbray subsequently got out of the car wielding
weapons - Mowbray had a piece of pipe and Nagy had a retractable
baton. As Nagy approached, Davis backed away. Meanwhile, Mowbray
stepped away and made a phone call. Soon, James Mowbray ("James"),
Mowbray's third cousin once removed, arrived and parked to the
right of Davis' vehicle. Greg Mowbray ("Greg"), Mowbray's father,
arrived a few minutes later and parked in front of Davis' vehicle,

effectively boxing Davis in. The situation became "heated," with Mowbray telling James and Greg that Davis was planning on "jumping" him. In response, Sabrina Davis ("Sabrina"), Davis' wife, stated that she had a gun.¹ This seemed to defuse the situation, as James, Greg and Davis began having a more civil conversation.

While Davis was talking to James and Greg, Mowbray hit Davis in the back of the head. As a result, Davis' dentures were broken and he suffered cuts to his mouth and throat. Mowbray then struck Davis seven or eight more times in the back of the head, knocking his dentures out of his mouth, causing them to shatter. Similarly, Davis' glasses were knocked off and broken.

Mowbray was subsequently arrested and charged with unlawful wounding and felony destruction of property. At trial, Mowbray argued that the Commonwealth failed to prove that he demonstrated the requisite intent to support a conviction of unlawful wounding. Mowbray also argued that his actions were justified because he was in fear for his life due to Sabrina's statement about the gun. After considering the evidence, the trial court found Mowbray guilty of misdemeanor assault and battery and misdemeanor destruction of property.

Mowbray appealed his convictions to the Court of Appeals. In his petition for appeal, Mowbray included a single assignment of error:

The trial judge erred in finding the defendant guilty of a violation of Virginia Code section[s] 18.2-57 and 18.2-137.

¹ At trial, Sabrina testified that she did not actually have a gun. She explained that she stated she had a gun because she thought Davis was in danger and she was afraid for her husband.

The clerk of the Court of Appeals notified Mowbray that this assignment of error was insufficient and gave him an opportunity to amend his assignment of error. The amended assignment of error provided:

The trial judge erred in finding the defendant guilty of a violation of Virginia Code section[s] 18.2-57 and 18.2-137, in that the evidence adduced at trial proffered by James Mowbray and Deputy Donald Smith demonstrated that the Commonwealth did not prove its cases beyond a reasonable doubt, and no reasonable fact finder could have found the appellant guilty of the charges.

By per curiam order dated November 20, 2013, the Court of Appeals dismissed Mowbray's appeal, finding the amended assignment of error was insufficient under Rule 5A:12(c). According to the Court of Appeals, the amended assignment of error failed to "explain 'in what way the evidence was insufficient.'" Mowbray sought review of the dismissal order by a three-judge panel. The panel adopted the per curiam order and upheld the dismissal.

The Court of Appeals erred in dismissing Mowbray's amended assignment of error. In interpreting Rule 5A:12(c), this Court has recognized that an assignment of error need only identify the ruling at issue with such specificity that it "puts the court and opposing counsel on notice" as to the ruling that the appellant believes to be erroneous. Findlay v. Commonwealth, 287 Va. 111, 116, 752 S.E.2d 868, 871 (2014). See also Herring v. Commonwealth, ___ Va. ___, 758 S.E.2d 225 (2014). Here, both the initial and the amended assignment of error sufficiently identify the ruling that Mowbray believes to be in error: the finding of guilt. Moreover,

the amended assignment of error makes it clear as to why Mowbray believes the trial court's ruling is in error: the Commonwealth failed to prove its case. In other words, Mowbray's amended assignment of error alleges that the Commonwealth's evidence was insufficient to support his conviction.² Thus, under our jurisprudence, Mowbray's amended assignment of error was sufficient under Rule 5A:12(c).

Although the Court of Appeals erred in dismissing his appeal, this Court is of the opinion that the decision of the trial court should be affirmed. On appeal, Mowbray argues that his actions were justified because he only struck Davis to prevent him from retrieving a gun. The evidence presented at trial, however, belies Mowbray's argument. The record indicates that the only reference to a gun was made by Sabrina, not Davis. Further, there was evidence demonstrating that, immediately prior to the assault, no one had made any threats and Greg and Davis were just having a conversation. Indeed, there is nothing in the record indicating that Davis made any attempt to retrieve a gun or any other weapon. Thus, there is sufficient evidence such that the judgment of the trial court is not "plainly wrong or without evidence to support it" and, therefore, there is no basis upon which the judgment of the trial court could be set aside.³ Code § 8.01-680.

² Further, Mowbray's assignment of error even indicated why the finding was in error, pointing to the evidence adduced from the testimony of Deputy Donald Smith and James.

³ Mowbray also appears to argue that the extent of Davis' injuries did not support a conviction of unlawful wounding. Notably, however, Davis was not convicted of unlawful wounding; he was convicted of assault and battery, a crime that does not look to

For these reasons, we reverse the judgment of the Court of Appeals dismissing Mowbray's petition for appeal, but affirm the judgment of the circuit court. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of Augusta County.

A Copy,

Teste:

John L. Harrington

Clerk

the extent of the injuries inflicted, but merely to the intent of the actor. See Wood v. Commonwealth, 149 Va. 401, 404, 140 S.E. 114, 115 (1927). Additionally, this argument was never raised at trial and, therefore, is waived. See Rule 5:25.