

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 16th day of February, 2017.

Orlando A. Cruz, Appellant,

against Record No. 151185
Court of Appeals No. 1230-14-4

Commonwealth of Virginia, Appellee.

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

Upon review of the record, pleadings, briefs and argument of counsel, the Court is of the opinion that there is no error in the Court of Appeals' judgment denying Orlando A. Cruz's petition for appeal challenging the sufficiency of the evidence for his conviction for intentional destruction of property valued over \$1,000, a felony. Code § 18.2-137(B).¹

At trial, Michelle White testified that while driving down Main Street in Culpeper, Virginia, she saw the Jeep Cruz was driving "almost miss" a stop sign. Cruz then drove up behind her, following her at a close distance, revving his motor and "jerk[ing] the steering wheel causing the Jeep to jump around the road." When she pulled over to let the Jeep pass, the Jeep drove toward White as if intending to sideswipe her car. White called the police to report the Jeep's aggressive driving and continued to follow the Jeep down the road. White also saw the Jeep "jerk[ing] around aggressively" behind another car before that car also moved off the road to allow the Jeep to pass. She saw the Jeep as it turned onto another road, but lost sight of it while she was waiting at a traffic light. Shortly thereafter White came upon the crash scene

¹Cruz was also convicted of aggravated involuntary manslaughter, Code § 18.2-36.1, felony homicide, Code § 18.2-33, wounding during the commission of a felony, Code § 18.2-53, unauthorized possession of an inspection sticker, Code § 46.2-1172, driving under the influence, Code § 18.2-266, and driving without a license, second or subsequent offense, Code § 46.2-300. These convictions are not before us in this appeal.

involving the Jeep and a van driven by Zulma Alvarez.

Ricky Rutherford testified that he saw the Jeep “flying down the road,” swerving between two lanes of traffic on Main Street and that he heard its wheels screeching. While following the Jeep as it turned onto another road, Rutherford called the police, saying “somebody was going to get hurt, he is going to hit somebody.” Rutherford saw the Jeep run a red light and then cross the center line and hit Alvarez’s van head-on. There were no skid marks to indicate Cruz applied the brakes to avoid the collision.

Alvarez died from injuries suffered in the crash and damage to her van exceeded \$1,000. Cruz was taken to the hospital where his blood alcohol level registered at 0.26.

The trial court found White and Rutherford to be credible witnesses and accepted their testimony regarding the incidents of the collision. The trial court convicted Cruz of felony destruction of property, stating that “based upon the totality of the defendant’s volitional acts as previously found by [the] Court to be proven the finding can be made beyond a reasonable [doubt] that he intend[ed] the immediate, direct and necessary consequences of his acts.”

In denying Cruz’s petition for appeal, the Court of Appeals, in a per curiam order, concluded that based upon the facts and circumstances of this case the trial court did not err in finding Cruz intended the immediate, direct, and necessary consequences of his volitional acts, which caused damage to another’s property in violation of Code § 18.2-137(B). *Cruz v. Commonwealth*, Record No. 1230-14-4 (Feb. 24, 2015). For the reasons stated in the per curiam order, a three-judge panel of the Court of Appeals likewise denied Cruz’s petition for appeal. *Cruz v. Commonwealth*, (Record No. 1230-14-4)(July 2, 2015).

In this appeal, Cruz argues that the testimony of White and Rutherford was insufficient to support intentional destruction of property and that any inference of intentional destruction

drawn from that evidence is arbitrary and not reasonable and, therefore, cannot support a finding of guilt.²

In addressing a challenge to the sufficiency of the evidence, we consider the evidence and all reasonable inferences therefrom in the light most favorable to the prevailing party, the Commonwealth. *Carter v. Commonwealth*, 280 Va. 100, 105, 694 S.E.2d 590, 593 (2010). We reverse the judgment of the lower court only if it is plainly wrong or not supported by the record. *Id.*; Code § 8.01-680. Where conflicting inferences flow from the undisputed evidence, we adopt those inferences favorable to the prevailing party if fairly deducible from the proven facts. *Pugh v. Commonwealth*, 223 Va. 663, 667, 292 S.E.2d 339, 341 (1982).

Whether a defendant intended to destroy property is a factual question to be resolved by the trier of fact. *Ingram v. Commonwealth*, 192 Va. 794, 801-02, 66 S.E.2d 846, 850 (1951). Intent may be established by circumstantial evidence. *Vincent v. Commonwealth*, 276 Va. 648, 652-53, 668 S.E.2d 137, 140 (2008); *see also, Barrett v. Commonwealth*, 210 Va. 153, 156, 169 S.E.2d 449, 451 (1969). “The specific intent to commit [a crime] may be inferred from conduct of the accused if such intent flows naturally from conduct proven.” *Wilson v. Commonwealth*, 249 Va. 95, 101, 452 S.E.2d 669, 674 (1995)(citing *Green v. Commonwealth*, 223 Va. 706, 711, 292 S.E.2d 605, 608 (1982)). Therefore, to establish a defendant’s intent, the fact finder can make reasonable inferences that a person intends the immediate, direct and necessary consequences of his proven actions. *Ellis v. Commonwealth*, 281 Va. 499, 507, 706 S.E.2d 849,

²In his brief and at oral argument, Cruz argued that the lower courts erred as a matter of law because the intent element for felony destruction of property under Code § 18.2-137(B) requires a “higher” standard of proof “akin to a pre-meditation” and that an inference that a person is presumed to intend the natural and probable consequences of his actions is not available for determining felony destruction of property. Cruz did not assign error to the legal standard used and therefore we do not address this argument. Rule 5:17(c)(1)(i).

853 (2011)(citing *Schmitt v. Commonwealth*, 262 Va. 127, 145, 547 S.E.2d 186, 198-99 (2001)).

The testimony of White and Rutherford, found to be credible by the trial court, established that Cruz was driving fast, repeatedly revved his engine, nearly sideswiping White's car but avoiding a collision, jerked his vehicle back and forth on White's bumper, and that of another vehicle, until those vehicles left the road and allowed Cruz to pass. Also, White and Rutherford both called the police to express their concerns that Cruz's driving actions were going to result in a collision. These facts support a reasonable inference that Cruz intended the immediate, direct and necessary consequences of his volitional acts. Such an inference is reasonable and not arbitrary.

Cruz also argues that the findings of the trial court that he was driving while intoxicated and exhibiting a "reckless disregard to human life" in convicting him of aggravated involuntary manslaughter, amount to a finding that he was negligent and therefore his driving resulting in destruction of property was also negligent, not intentional. This argument is not persuasive. The ability to form a specific intent to engage in certain acts is not precluded by alcohol intoxication. For that reason, voluntary intoxication is not a defense to any crime except in certain cases. *See, e.g., Wright v. Commonwealth*, 234 Va. 627, 629, 363 S.E.2d 711, 712 (1988)(internal citations omitted)(holding "voluntary intoxication is not an excuse for any crime" except in cases involving deliberate and premeditated murder). As stated above, the specific intent required to commit a crime can be inferred from the proven conduct of the defendant. The trial court in this case considered the circumstances of Cruz's driving surrounding the destruction of property, finding them to be volitional, not inadvertent acts, with the likelihood of causing destruction of property, thereby supporting the inference that he intended the immediate, direct and necessary consequences of his acts.

Accordingly, based on this record, we cannot say that the trial court's factual findings that Cruz intentionally destroyed property in violation of Code § 18.2-37(B) are plainly wrong or without support in the record.

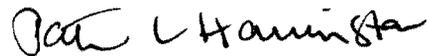
Accordingly, the judgment of the Court of Appeals is affirmed. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

Justice McCullough took no part in the consideration of this case.

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

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Paul L. Hammit".

Clerk