



## William Rhett Viar Brown v. Commonwealth of Virginia

2024 | Cited 0 times | Court of Appeals of Virginia | February 27, 2024

### COURT OF APPEALS OF VIRGINIA

Present: Judges Huff, Malveaux and Chaney Argued by videoconference

WILLIAM RHETT VIAR BROWN MEMORANDUM OPINION\* BY v. Record No. 0191-23-3  
JUDGE GLEN A. HUFF FEBRUARY 27, 2024 COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF LYNCHBURG J. Frederick Watson, Judge

Gary L. Straw (Straw Law Firm, PLLC, on brief), for appellant.

William K. Hamilton, Assistant Attorney General (Jason S. Miyares, Attorney General; Rebecca M. Garcia, Assistant Attorney General, on brief), for appellee.

Following a bench trial, the City of Lynchburg Circuit Court (the trial convicted

William Rhett Viar Brown of malicious wounding, in violation of Code § 18.2-51.

Appellant contends that the evidence is insufficient to support his conviction and that the trial court erred by rejecting his claim of excusable self-defense. Finding no error, this Court affirms the trial

\* This opinion is not designated for publication. See Code § 17.1-413(A). UNPUBLISHED  
BACKGROUND 1

On March 14, 2020, Steven Foster and Greg Hofmann attended celebration at The Water Dog bar in Lynchburg. As Hofmann and Foster were waiting to pay their

bill and leave, appellant approached, tapped Foster on the shoulder, and whispered in his ear, [w] appellant or who he was referring to.

Within seconds, appellant punched Foster Foster threw his drink at appellant , while another patron tried to restrain appellant as he repeatedly punched Foster in the face. As a result of



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appell , Foster suffered a broken jaw and nose, and required a dental implant and three surgeries to repair his injuries. Appellant was not injured in the fight.

At trial, The

video shows appellant approach Foster and speak in his right ear before punching him, causing Foster to fall to the ground. Another patron is seen trying to lead a resistant appellant away from Foster. Foster rose and threw his drink at appellant, after which appellant continued punching Foster in the face until patrons separated them.

Appellant testified in his own defense that, after Foster threw the beer bottle at him, his subsequent actions were made in self-defense. Appellant claimed that when he confronted Foster s Appellant

admitted that he hit Foster in the face and knocked him to the ground, but claimed that when Foster

1 light most favorable to the Commonwealth, the prevailing party [below] Poole v. Commonwealth,

73 Va. App. 357, 360 (2021) (quoting Gerald v. Commonwealth, 295 Va. 469, 472 (2018)). In doing so, we discard any of conflicting evidence, and regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence. See Gerald, 295 Va. at 473. appellant and he tried to back away. He also acknowledged that he was

uninjured after the incident and that he repeatedly struck Foster in the face.

The trial court found testimony incredible after reviewing the surveillance video

multiple times version of the events. The trial court found that appellant

- [such] that you were then acting in

self- court convicted appellant of malicious wounding.

This appeal followed.



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### ANALYSIS

Appellant challenges the sufficiency of the evidence to sustain his malicious wounding conviction. court is

presumed correct and will not be disturbed unless it is plainly wrong or without evidence to

Ingram v. Commonwealth, 74 Va. App. 59, 76 (2021) (quoting Smith v.

Commonwealth

Id. (quoting Yoder v. Commonwealth, 298 Va. 180, 182 (2019)).

Chavez v.

Commonwealth, 69 Va. App. 149, 161 (2018) (quoting Banks v. Commonwealth, 67 Va. App.

273, 288 (2017)).

him

bodily in Ramos v. Commonwealth, 71

Va. App. 150, 162 (2019) (alteration in original) (quoting Burkeen v. Commonwealth, 286 Va. 255, 259 (2013)). Malice is an element of the offense. Id. Malice is defined as

Watson-Scott v. Commonwealth, 298 Va. 251, 255-56 (2019) (quoting Dawkins v.

Commonwealth, 186 Va. 55, 61 (1947)). with a sedate, deliberate mind, and formed design, or committed a purposeful and cruel act

Synan v. Commonwealth, 67 Va. App. 173, 187

(2017) (quoting Robertson v. Commonwealth, 31 Va. App. 814, 823 (2000)). Malice is a

Id. at 187-88

(quoting Robertson, 31 Va. App. at 823).

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Commonwealth, 25 Va. App. 629, 642 (1997) (quoting Essex v. Commonwealth, 228 Va. 273, 281 (1984)).

a blow with

a bare fist. But an assault with a bare fist may be attended with such circumstances of violence

Burkeen, 286 Va. at 259 (quoting Fletcher

v. Commonwealth, 209 Va. 636, 640 (1969)). Nevertheless,

support a finding of malice. Roark v. Commonwealth, 182 Va. 244, 250 (1944) (quoting

M Whirt , 44 Va. (3 Gratt.) 594, 611 (1846)).

Here, after having watched the surveillance video several times and weighing the

evidence, the trial court credited account of the attack and rejected version of

events. credibility of witnesses . . . is within the exclusive province of the [fact

finder], wh[o] has the unique opportunity to observe the demeanor of the witnesses as they

Dalton v. Commonwealth, 64 Va. App. 512, 525 (2015) (first alteration in original) (quoting Lea v. Commonwealth, 16 Va. resolved by the [fact finder] in favor of the Commonwealth, those findings will not be disturbed

Smith v. Commonwealth, 56 Va. App. 711, 718 (2010).

role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving

testimony Speller

v. Commonwealth, 69 Va. App. 378, 388 (2018). that appellant acted maliciously and with the requisite intent.

Appellant also asserts that the trial court erred by rejecting his claim that he acted in

self-defense. -defense is an affirmative defense which the accused must prove by



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Hughes v.

Commonwealth, 39 Va. App. 448, 464 (2002) (quoting Smith v. Commonwealth, 17 Va. App. 68, 71 (1993)). Whether an accused proves circumstances sufficient to create a reasonable doubt that he acted in self-defense is a question of fact. Bell v. Commonwealth, 66 Va. App. 479, 486 (2016) (quoting Smith, 17 Va. App. at 71). The fact finder must determine whether the appellant acted in reasonable apprehension of bodily harm. See, e.g., Diffendal v. Commonwealth, 8 Va. App. 417, 421 (1989) (explaining that a person is privileged to use reasonable force when he or she reasonably apprehends bodily harm by another and exercise[s] reasonable force to repel the assault ). This defense also requires a finding that the force that the appellant used was reasonable in relation to the threatened harm. See Caison v. Commonwealth, 52 Va. App. 423, 440 (2008).

Virginia law recognizes two forms of self-defense to criminal acts of violence:

self-defense without fault ( justifiable self-defense ) and self-defense with fault ( excusable self-defense ). Jones v. Commonwealth, 71 Va. App. 70, 94 (2019) (quoting Bell, 66 Va. App.

at 487). Any form of conduct by the accused from which the fact finder may reasonably infer that the accused contributed to the affray constitutes fault. Id. at 94-95 (quoting Smith, 17

Va. App at 71). Excusable self-defense occurs where an accused, although in some fault in the first instance in provoking or bringing on the difficulty, when attacked retreats as far as possible, announces his desire for peace, and [injures] his adversary from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm. Avent v. Commonwealth, 279 Va. 175, 200 (2010).



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Here, the evidence proved that appellant initiated the hostility. Angered by the belief that Foster had acted inappropriately towards his girlfriend, appellant approached and punched Foster in the face without warning, knocking him to the ground. Although Foster threw a bottle at appellant, appellant did not retreat from the affray; instead, he had to be restrained. Appellant then continued the attack, brutally punching Foster in the face numerous times nose and jaw, and injuring his teeth. 2 Because appellant initiated the attack, failed to retreat, and used excessive force against Foster, this Court finds no error in self-defense claim. malicious wounding.

2 consisting of appellant approaching and punching Foster to the ground and the second beginning when Foster rose from the ground and threw his beer bottle at appell , therefore, The trial court explicitly found that appellant had not retreated to have been acting in self-defense. Because the record reflects that appellant was restrained by bar patrons and the trial court explicitly found that appellant had not retreated, CONCLUSION

For the foregoing reasons, this Court concludes that the trial court did not err in judgment is affirmed.

Affirmed.

