VIRGINIA:

In the Court of Appeals of Virginia on **Friday** *the* **28th** *day of* **December, 2018.**

Harshadkumar Nanjibhai Jadav, Appellant,

against Record No. 0223-18-2
Circuit Court No. CR16000897(00)

Commonwealth of Virginia, Appellee.

From the Circuit Court of Hanover County

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

I. and II. A jury convicted appellant of the first-degree murder of his wife, Reena Jadav. In the first two assignments of error, he argues that the trial court erred by granting Jury Instruction Number 11 and Jury Instruction Number 13 over his objection.

On appeal, this Court's "sole responsibility in reviewing [jury instructions] is to see that the law has been clearly stated and that the instructions cover all issues which the evidence fairly raises." Molina v. Commonwealth, 272 Va. 666, 671 (2006) (quoting Swisher v. Swisher, 223 Va. 499, 503 (1982)).

A. Instruction Number 13

Instruction Number 13 stated as follows:

> Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. Malice may be inferred from any deliberate, willful, and cruel act against another, however sudden. Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind such as hot blood, rage, anger, resentment, terror or fear so as to demonstrate an absence of deliberate design to kill, or to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to defendant but those circumstances must be such as would have

> aroused heat of passion in a reasonable person. If a person acts upon reflection or deliberation, or after his passion has cooled or there has been a reasonable time or opportunity for cooling, then the act is not attributable to heat of passion.

Appellant notes that, at the conclusion of trial, he sought an instruction on voluntary manslaughter, but the trial court rejected it, thereby removing heat of passion as an issue before the jury. He asserts that, by instructing the jury on heat of passion, the trial court "confused" the jury regarding how to apply heat of passion and malice to the facts of the case. Appellant also contends that the instruction "needlessly singled out the element of malice for greater consideration than was called for in this case."

Appellant did not object to Instruction Number 13 when it was offered. Instead, he waited until after the jury had rendered its verdict to voice his objection. Because he waited until after the instruction was provided to the jury, his objection came too late. An objection does not satisfy the requirements of Rule 5A:18 unless it is "made . . . at a point in the proceeding when the trial court is in a position, not only to consider the asserted error, but also to rectify the effect of the asserted error." Porter v. Commonwealth, 66 Va. App. 302, 311 (2016) (quoting Maxwell v. Commonwealth, 287 Va. 258, 265 (2014)). The timeliness requirement "allows the circuit court to remedy the error while also giving 'the opposing party the opportunity to meet the objection at that stage of the proceeding.'" Id. (quoting Maxwell, 287 Va. at 265). "Although Rule 5A:18 contains exceptions for good cause or to meet the ends of justice, appellant does not argue these exceptions and we will not invoke them *sua sponte*." Williams v. Commonwealth, 57 Va. App. 341, 347 (2010).

Accordingly, we decline to consider the first assignment of error.

B. Instruction Number 11

Instruction No. 11 stated as follows:

> In deciding whether premeditation and deliberation exist, you may consider the brutality of the attack, whether more than one blow was struck, the disparity in size and strength between the defendant and the victim, the concealment of the victim's body, the defendant's lack of remorse and the defendant's efforts to avoid detection.

Appellant argues that this instruction was improper for two reasons. First, he asserts that the trial court erred by granting the instruction because it "impermissibly singled out for emphasis the factors to be considered in establishing premeditation and deliberation." Although he acknowledges that Terry v. Commonwealth, 5 Va. App. 167, 170 (1987), upheld an instruction reciting the factors a jury may consider in deciding a defendant's intent to distribute drugs, he argues that Terry is distinguishable because it involved a model jury instruction and because "it did not suggest that specific evidence implied any particular finding."

"To premeditate means to adopt a specific intent to kill . . . ." Rhodes v. Commonwealth, 238 Va. 480, 485 (1989) (quoting Smith v. Commonwealth, 220 Va. 696, 700 (1980)). An accused may form that intent "only a moment before the fatal act is committed provided the accused had time to think and did intend to kill." Giarratano v. Commonwealth, 220 Va. 1064, 1074 (1980). "It is the will and purpose to kill, not necessarily the interval of time, which determine the grade of the offense." Rhodes, 238 Va. at 485-86 (quoting Akers v. Commonwealth, 216 Va. 40, 48 (1975)).

In Epperly v. Commonwealth, 224 Va. 214, 232 (1982), the Supreme Court held that, in deciding whether a killing was premeditated,

> [a] jury may properly consider the brutality of the attack, and whether more than one blow was struck . . . ; the disparity in size and strength between the defendant and the victim . . . ; the concealment of the victim's body . . . ; and the defendant's lack of remorse and efforts to avoid detection.

The Court also held that "motive . . . is relevant and often most persuasive upon the question of the actor's intent." Id. (citations omitted). Although each fact, standing alone, may be insufficient to prove premeditation, "in combination they are more than enough" to prove that a killing was premeditated. Id.

In Rhodes v. Commonwealth, 238 Va. 480, 487 (1989), the Supreme Court clarified its decision in Epperly, explaining that Epperly did not hold that "each and every factor [listed] . . . is essential" to support a finding of premeditation. Instead, the reviewing court

> will affirm a conviction of premeditated murder, even though based upon wholly circumstantial evidence, whenever [it] can say that the reasonable import of such evidence, considered as a whole, is sufficient to show beyond a

> reasonable doubt that the accused was the criminal agent and that he acted with a premeditated intent to kill.

Id.

Although appellant argues that Instruction Number 11 improperly "singled out for emphasis" the factors the jury could consider in deciding premeditation, the instruction correctly stated that certain factors *may* be considered in determining whether the killing was premeditated. Furthermore, the trial court also instructed the jury that "'[w]illful, deliberate, and premeditated' means a specific intent to kill, adopted at some time before the killing, but which need not exist for any particular length of time." (Instruction Number 10). Viewed in context and based on Epperly and Rhodes, Instruction Number 11 properly stated the law concerning the issues fairly raised by the evidence with regard to premeditation. See Molina, 272 Va. at 671. Accordingly, the trial court did not err by granting the instruction.

Appellant also argues that, even if the instruction properly recited the factors the jury could consider in determining premeditation, the instruction was impermissibly "weighted in favor of the Commonwealth" because it suggested that certain facts had already been proved, rather than submitting those factual issues to the jury.

We decline to address this argument for two reasons. First, appellant does not assign error to the trial court's ruling on this basis. An issue that is not part of appellant's assignment of error in the petition for appeal is considered waived. See Simmons v. Commonwealth, 63 Va. App. 69, 75 n.4 (2014). Second, assuming that the second assignment of error[1] encompasses this argument, appellant acknowledges in his petition for appeal that he raised this argument in his motion to set aside the verdict. Because appellant did not present this argument to the trial court when the instruction was offered, his argument was untimely and has been waived. Rule 5A:18; Porter, 66 Va. App. at 311. Appellant does not ask that we consider the

[1] The second assignment of error states that "[t]he trial court erred in denying Defendant's objection to Jury Instruction Number Eleven as it impermissibly singled out for emphasis the factors to be considered in establishing premeditation and deliberation."

The couple returned to their home in Hanover on Saturday, September 3, 2016. On the day of their return, they ate dinner with Reena's parents, Chandra and Sumitra Shrestha. When Reena went to the bathroom, appellant spoke to Chandra in a hushed voice and asked him to advise his daughter not to communicate with her new employer in Tennessee because "they were not going back." Appellant told Chandra that the bank would have to fire her and pay her for another two weeks if Reena did not reply to the bank's communications.

That same evening, appellant communicated with Felicia Smith, one of the women he had met online and had been dating since July 27, 2016. He told Smith that he missed her and could not wait to "cuddle" with her. Using the dating website, appellant also texted another woman whom he had met online and suggested that they meet in person.

On Sunday, September 4, 2016, the day before Labor Day, Reena's parents and Reena attended a family dinner hosted by Reena's sister; when appellant did not appear, Chandra called him and urged him to come. Appellant declined, explaining that he and Reena were fighting. After the dinner, Reena asked her parents to stop by her house in the Honey Meadows subdivision, and they arrived there between 8:15 p.m. and 8:30 p.m. Appellant was in the kitchen cooking when Reena, Sumitra, and Chandra arrived. Sumitra went upstairs with her daughter to help her unpack from her trip, and Chandra sat down in the living room while appellant continued cooking. After the women went upstairs, appellant emerged from the kitchen and removed Reena's cell phone from her purse.

When Sumitra returned downstairs, she announced that Reena had changed into her nightclothes and would join them shortly. Appellant, who was still holding Reena's phone in his hands, encouraged Reena's parents to leave, telling them that Reena might want to leave with them if they stayed. Sumitra and Chandra complied and left the house between 9:30 p.m. and 9:45 p.m. They never saw their daughter again.

At approximately 11:00 p.m., Dr. Willie Stroble and Roger Hultgren, who lived in neighboring houses in the Honey Meadows subdivision, heard a woman's scream behind their houses. Both men looked from their homes toward their backyards, but the area was dark, and they saw nothing.

At 12:47 a.m. appellant texted Reena's phone and asked her to tell him when she arrived at her parents' house, noting that he was "so seeeepyyyy [sic]."

The following morning, appellant texted Reena's parents and asked if Reena was at their house. Chandra called appellant immediately and told him that Reena was not with them. Appellant told Chandra that he and Reena went for a walk after Chandra and Sumitra left, but that when he and Reena returned home, Reena wanted appellant to walk a second time. Appellant told Reena that he was tired and went upstairs to bed, leaving her watching television downstairs. He admitted to Chandra that he had taken Reena's car key, but noted that Reena told him that she was leaving and that she would call her father to pick her up.

Because Reena's jogging clothes were missing, appellant speculated to Chandra that she might have gone for a walk. Chandra directed appellant to search for her in the car while Chandra stayed on the phone. Appellant drove through the neighborhood in Reena's gray Prius and finally told Chandra that he saw Reena lying unconscious on the ground. Appellant told Chandra that he was calling 911 and hung up.

Dressed in black athletic pants, an orange shirt, and sneakers, Reena was lying on her left side in the grassy area behind Stroble's and Hultgren's houses. Her head was covered in blood, with visible blows to her face and the back of her head. A "gaping hole" in the top of her head exposed brain matter. When appellant called 911, however, he did not state that she was clearly dead. Instead, he described her as "all bloodied up" and stated that she "look[ed] like she's not breathing." Based on appellant's ambiguous description, the 911 operator instructed him to turn Reena over on her back to start CPR. Rather than telling the operator that Reena was dead, appellant responded that she was too heavy and "all jammed up." When the 911 operator asked appellant if Reena was "beyond help," appellant replied, "I'm not a doctor. I don't know."

Hanover County Sheriff's Sergeant Gardner arrived at the scene at approximately 5:44 a.m. on September 5, 2016. Gardner saw appellant standing next to a gray Prius talking on the phone. Reena's body was nearby lying in the grass next to a black backpack and covered in blood. After seeing the condition of Reena's body, Gardner immediately approached appellant and directed him to hang up the phone and to keep

his hands visible while Gardner checked his car for a weapon. Appellant calmly told Gardner that Reena had gone out for a run the night before and that he had searched for her when she did not come home.

Deputy Dumond arrived at the scene at approximately 5:45 a.m. After handcuffing appellant, Dumond detained him in his police car for approximately two hours and recorded their conversation. Appellant told Dumond that he and Reena fought almost daily and acknowledged that they had been fighting the prior evening. When Reena told appellant that she "didn't want to be in the same room" with him, he went upstairs and went to sleep. He stated that he did not realize Reena was missing until he woke up the following morning. Appellant noted that, after he found her, he attempted to perform CPR, but could not move her because "she's really heavy."[2] Later, he asked Dumond why Reena was not in the ambulance. When Dumond informed appellant that she was deceased, he responded, "You're kidding me." But he did not cry.

Investigator Laplaga arrived at the scene at approximately 7:30 a.m. on September 5, 2016. Laplaga examined the backpack on the ground next to Reena's body and found red and brown stains on the top of it. The backpack contained only a pair of work gloves. Laplaga executed a search warrant at appellant's house and found an open bag of tools in an upstairs closet. The tool bag contained multiple tools, but it did not contain a hammer.

Investigator Dover arrived at the scene at 7:05 a.m. and interviewed appellant at approximately 8:15 a.m. Appellant told Dover that Reena became upset after her parents left without warning and that the couple took a walk together. When they returned home, Reena ate a snack and suggested a second walk, but appellant declined. Angry, Reena told appellant to go upstairs and announced that she was going to her parents' house. Appellant stated that he went to bed at approximately 10:30 p.m. and woke up at 12:30 a.m. to find Reena was not beside him. He noted that he texted her and asked her to let him know when she

[2] When the medical examiner investigator later arrived at the scene, she turned Reena on her back "rather effortlessly."

arrived safely at her parents' house. Appellant specifically told Dover that he did not leave his house between 10:30 p.m. on September 4, 2016, and 5:22 a.m. the following morning.

Investigator Cary checked appellant's cell phone records to determine his whereabouts on the night of the murder. During the weeks preceding the murder, Cary discovered that appellant's cell phone consistently "pinged" off the same cell tower between 11:00 p.m. until 6:00 a.m. each night. On the night of the murder, however, Cary noticed a "deviation in the pattern" between the hours of 11:00 p.m. and 6:00 a.m. At 11:31 p.m. appellant's phone was at his usual "home" cell phone tower, but "shifted" to the "301/295 tower" at 11:38 p.m. and then shifted again at 11:42 p.m. to the "301 tower south of New Ashcake." At 11:44 p.m. the phone shifted back to the "301/295 tower" and at 11:47 p.m. moved to the Atlee Station Road tower "towards [his] residence." By 12:01 a.m. on September 5, 2016, appellant's phone connected with his usual "home tower" and remained there until he made the 911 call four or five hours later. Stated generally, between 11:31 p.m. on September 4, 2016, and 12:01 a.m. on September 5, 2016, appellant's cell phone left his "home" cell tower and used three cell towers in three areas surrounding the Honey Meadows subdivision before returning home. Surveillance footage from businesses in the areas where appellant's phone traveled during that timeframe showed a gray Prius traveling the roads; the vehicle matched the one appellant was driving when the police found him at the crime scene.

On Wednesday, September 7, 2016, Melinda Mitchell discovered a hammer in the grassy ravine abutting Route 301 behind her house. Strewn about the embankment she found a size medium blue shirt with red stripes, a pair of men's gray Levi's pants, size 36/30, a pair of gray Hanes brand men's underwear, and a cleaning wipe. Mitchell placed the hammer in her husband's toolbox and threw away the underwear and the wipe. Planning to donate the shirt and the pants, she washed them.

On Saturday, September 10, 2016, appellant attended Reena's funeral, but did not join the family at a function immediately after the funeral or in Virginia Beach the following day to spread Reena's ashes in the ocean. As Reena's family drove back from Virginia Beach, her brother Gaurav Shrestha texted appellant and

asked if the family could gather some of Reena's belongings as keepsakes; appellant informed Gaurav that he had donated all of her possessions to Goodwill while the family was at the beach.

On Monday, September 12, 2016, Mitchell saw police searching the area next to the road behind her house and turned over the items she had found five days earlier. The shirt was identical to the one appellant had been wearing when Reena's parents saw him at 9:30 p.m. on September 4, 2016. Traces of blood were visible on the hammer head and claw, and forensic analysis determined that Reena could not be statistically eliminated as the source. Furthermore, DNA material was found in the men's underwear recovered from Mitchell's yard, and neither appellant nor Reena could be statistically eliminated as the sources. Cary confirmed that appellant's cell phone used a cell tower serving the area around Mitchell's home sometime between 11:31 p.m. on September 4, 2016 and 12:01 a.m. on September 5, 2016. Using "time-distance equations" and how much time passed between appellant's phone moving from one cell tower to the next, Cary was able to narrow the routes on which appellant's phone traveled. Cary drove one potential route from Honey Meadows subdivision to Mitchell's house and back to Honey Meadows and found that the round-trip excursion took twelve minutes and one second.

At 2:30 p.m. on September 12, 2016, the police arrested appellant. At the time of his arrest, he was wearing a medium size polo shirt and size 36/30 Levi's jeans. He was also carrying a backpack containing ten thousand dollars in cash, his passport, Reena's passport, correspondence explaining how to collect on Reena's life insurance policies, and a pair of men's Hanes underwear identical to the ones discarded in Mitchell's back yard.

At trial, medical examiner Dr. Michael Hays testified that Reena had suffered "at least" fifteen blows to her head, all of which were consistent with having been struck with either the head or the claw of a hammer. She had been struck in the face at least six times, breaking her jaw and knocking out her teeth. The left and right sides of her head, as well as the back of her head showed signs of trauma, including a quarter-inch round "puncture" wound near her right temple consistent with an object other than a hammer head piercing her skull.

Appellant argues that the evidence was insufficient to prove that he was the perpetrator and, even if it did, he contends that the evidence did not prove that Reena's death was premeditated. He emphasizes that no physical evidence connected him to the murder, noting that his DNA was not on the hammer bearing Reena's blood and that no "large amounts of blood" were found in his house or car. Appellant does not dispute that the shirt and pants in Mitchell's yard were his, but points out that Mitchell saw no blood on the clothing. He discounts the evidence that his phone traveled in the direction of Mitchell's house on the night of the murder, noting that the evidence did not prove that he possessed the phone while it was in motion. He also contends that his internet records showed that he searched the term "divorce . . . at four o'clock in the morning" on September 5, 2016, suggesting that he did not know that Reena was dead. Finally, he cites the lack of eyewitnesses to the murder and the absence of a confession.

The evidence proving that appellant murdered Reena was circumstantial, but "[c]ircumstantial evidence is competent and is entitled to as much weight as direct evidence, provided that the circumstantial evidence is sufficiently convincing to exclude every reasonable hypothesis except that of guilt." Finney v. Commonwealth, 277 Va. 83, 89 (2009) (quoting Dowden v. Commonwealth, 260 Va. 459, 468 (2000)). "Circumstantial evidence is not viewed in isolation. While no single piece of evidence may be sufficient, the combined force of many concurrent and related circumstances, each insufficient in itself, may lead a reasonable mind irresistibly to a conclusion." Muhammad v. Commonwealth, 269 Va. 451, 479 (2005).

Viewed as a whole, the circumstances presented at trial support the jury's finding that appellant was the perpetrator. Appellant's and Reena's marriage was strained in July and August of 2016, and appellant was involved in clandestine affairs with multiple women. When Reena started a new job with over one million dollars in life insurance coverage and named appellant as the beneficiary, appellant immediately began to research homicide and life insurance policies. Within a day of his return from Nashville, appellant isolated Reena from her parents by pressuring them to leave her alone with him and by seizing her cell phone and car key. By his own admission, appellant took a late-night walk with Reena after her parents left. Despite telling police that he went to bed at 10:30 p.m. that night and did not leave the house until the

following morning, his cell phone records showed that the phone left the neighborhood at 11:31 p.m., traveled in the direction of the house where the murder weapon was found, and returned at 12:01 a.m. The murder weapon was recovered next to appellant's shirt, pants, and underwear.

From the cell phone records, the jury could reasonably conclude that appellant lied to the police when he told them he had not left the house all night, and that he did so to conceal his guilt. See Flanagan v. Commonwealth, 58 Va. App. 681, 702 (2011). The evidence also permitted a rational finding that appellant texted Reena's phone at 12:47 a.m. on the night of the murder because he wanted to create an alibi.

The timeline of appellant's movements on the night of the murder provided further proof that he was the perpetrator. A woman's scream was heard at 11:00 p.m. near the crime scene, and appellant's phone left the neighborhood at 11:31 p.m., providing him with sufficient time to change his clothes and clean up after the murder before driving to Mitchell's house to dispose of the murder weapon and soiled clothes. Furthermore, Cary testified that the round trip from Honey Meadows to Mitchell's house could take as little time as twelve minutes, providing appellant with ample time to travel to Mitchell's house and return home in the thirty-minute span between 11:31 p.m. and 12:01 a.m., the times his cell phone left Honey Meadows and returned home.

A rational fact finder could also infer that appellant experienced no remorse upon learning of Reena's death; he showed no signs of grief upon finding Reena's brutalized remains or in discussing her death with the police. Appellant avoided telling the 911 operator that Reena was dead, despite her gruesome and extensive head injuries, and instead claimed that she was too heavy to move, a claim that the medical examiner investigator later contradicted when she moved Reena "rather effortlessly." When Dumond later told him that Reena was deceased, his response was, "You're kidding me." Later, appellant attended Reena's funeral, but did not join her family afterward or participate in spreading his wife's ashes. Instead, he cleared the house of her personal belongings. When he was finally arrested, he was carrying a backpack with a large amount of cash, passports, and instructions on how to collect Reena's life insurance proceeds.

Appellant argues that the evidence proved that he was researching how to divorce his wife on the night of the murder, suggesting that he did not intend to murder her. However, as the Commonwealth emphasized at trial, appellant's argument is not supported by the record. The evidence did not prove that he searched the term "divorce" during the early morning hours of September 5, 2016; it showed only that he searched the term "homicide" and "insurance" during the week before Reena was murdered.

Aside from the computer searches, appellant posits several hypotheses of innocence based on the evidence that the Commonwealth did not present. Based on the evidence before the jury, however, a rational fact finder could have found that appellant was the perpetrator. "The reasonable-hypothesis principle 'merely echoes the standard applicable to every criminal case.'" Commonwealth v. Moseley, 293 Va. 455, 464 (2017) (quoting Vasquez v. Commonwealth, 291 Va. 232, 249-50 (2016)). "It is 'simply another way of stating that the Commonwealth has the burden of proof beyond a reasonable doubt.'" Id. (quoting Commonwealth v. Hudson, 265 Va. 505, 513 (2003)). "'Whether an alternative hypothesis of innocence is reasonable is a question of fact' that will be reversed on appeal only if plainly wrong." Jennings v. Commonwealth, 67 Va. App. 620, 626 (2017) (quoting Stevens v. Commonwealth, 38 Va. App. 528, 535 (2002)). Here, the evidence was competent, credible, and sufficient to prove beyond a reasonable doubt that appellant murdered Reena.

Appellant argues further that, even assuming the evidence proved he was the perpetrator, it failed to exclude a reasonable hypothesis that he killed his wife in the heat of passion following an argument. He cites evidence that he and Reena often fought and that they were fighting on the day of her death.

Premeditation, or the "adopt[ion] [of] a specific intent to kill . . . is what distinguishes first and second degree murder." Smith v. Commonwealth, 239 Va. 243, 259 (1990) (quoting Rhodes v. Commonwealth, 238 Va. 480, 485 (1989)). To prove premeditation, the Commonwealth need not establish that the accused planned the killing for any specific period of time, only that "[t]he intent to kill . . . c[a]me into existence at some time before the killing." Smith v. Commonwealth, 220 Va. 696, 700 (1980). "[P]remeditation . . . seldom can be proved by direct evidence" and therefore is often proved through circumstantial evidence.

Rhodes, 238 Va. at 486. In determining whether the killing was premeditated, the fact finder may consider the circumstances surrounding the killing itself, including the "brutality of the attack, and whether more than one blow was struck, [and] the disparity in size and strength between the defendant and the victim." Avent v. Commonwealth, 279 Va. 175, 208 (2010) (quoting Epperly v. Commonwealth, 224 Va. 214, 232 (1982)). The fact finder may also consider the accused's conduct after the killing, including efforts to conceal the body, lack of remorse, and efforts to avoid detection. Id.

This Court has upheld a finding of premeditation where the accused brutally beat his victim, inflicting several severe skull fractures through blunt force trauma. See Knight v. Commonwealth, 41 Va. App. 617, 625 (2003). In Knight, this Court decided that the number and severity of the blows provided "[t]he jury [with] sufficient evidence to find the killing was brutal." Id. Similarly, the evidence here shows that Reena's murder was especially brutal, with "at least" fifteen blows to her head with both sides of a claw hammer. The blows broke her jaw, her teeth, and opened her skull, exposing brain matter. In addition, appellant drove an unidentified object into her right temple, leaving a cylindrical "puncture wound" approximately one quarter inch in diameter.

The evidence permitted the fact finder to conclude that appellant carefully planned Reena's murder. See Turner v. Commonwealth, 23 Va. App. 270, 277 (1996) ("homicide committed pursuant to a preconceived plan" is murder in the first degree). During the week before Reena's murder, appellant researched how to claim the proceeds from her recently obtained life insurance policies and continued to pursue extramarital affairs with other women. On the night of the murder, appellant pressured Reena's parents to leave her alone with him and took her phone and car key, eliminating her ability to seek help or to escape. The jury could rationally infer that he took the hammer with him when he walked with Reena through their subdivision and, when they reached an area that was not illuminated, he brutally attacked her at 11:00 p.m. His phone records showed that he did not leave the neighborhood until 11:31 p.m., providing him with the opportunity to clean himself up and change his clothes before driving to Mitchell's house to dispose of the murder weapon and his original clothes.

Based on the planning involved in the murder, as well as the scope and degree of the injuries inflicted, the jury could rationally find that appellant intended to kill Reena when he struck her multiple times in the face and head with a hammer and drove an object into her temple. Accordingly, the evidence was sufficient to prove beyond a reasonable doubt that the killing was premeditated.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

The Commonwealth shall recover of the appellant the costs in the trial court.

This Court's records reflect that Charles C. Cosby, Jr., Esquire, and Kevin E. Calhoun, Esquire, are counsel of record for appellant in this matter.

A Copy,

Teste: Cynthia L. McCoy
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 7th day of October, 2019.

Harshadkumar Nanjibhai Jadav, Appellant,

against Record No. 190570
Court of Appeals No. 0223-18-2

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court refuses the petition for appeal.

Justice Chafin took no part in the resolution of the petition.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX C

Additional material from this filing is available in the Clerk's Office.