VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 9th day of October, 2019.

Abdul Shabazz Wiggins, Appellant,

against Record No. 190544
Court of Appeals No. 0516-18-1

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.

And it is ordered that the Commonwealth recover of the appellant the costs in this Court and the costs in the courts below.

Costs due the Commonwealth
by appellant in Supreme
Court of Virginia:

Public Defender $500.00 plus costs and expenses

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: _____
Deputy Clerk

Appendix A

VIRGINIA:

In the Court of Appeals of Virginia on **Wednesday** *the* **27th** *day of* **March, 2019.**

Abdul Shabazz Wiggins, Appellant,

against Record No. 0516-18-1
Circuit Court No. CR17000137-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Suffolk

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 reason:

Appellant was convicted of assault and battery based upon his punching an inmate in the face while appellant was employed as a correctional officer at the Tidewater Western Regional Jail. Appellant challenges the sufficiency of the evidence on appeal, contending that the trial court erred in finding that appellant's actions were not justified by the circumstances of the incident.

When reviewing a challenge to the sufficiency of the evidence, this Court considers the evidence in the light most favorable to the Commonwealth, the prevailing party below, and reverses the judgment of the trial court only when its decision is plainly wrong or without evidence to support it. See Farhoumand v. Commonwealth, 288 Va. 338, 351 (2014). This Court must "discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn" from that evidence. Bowman v. Commonwealth, 290 Va. 492, 494 (2015) (quoting Kelley v. Commonwealth, 289 Va. 463, 467-68 (2015)). The relevant question is not whether this Court "believes that the evidence at the trial established guilt beyond a reasonable doubt[,]" but "whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable

Appendix C

doubt.'" Williams v. Commonwealth, 278 Va. 190, 193 (2009) (quoting Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)); accord Tizon v. Commonwealth, 60 Va. App. 1, 9-10 (2012).

The evidence established that on November 5, 2016, appellant was employed as a correctional officer at the Tidewater Western Regional Jail (TWRJ), assigned to the cell block in which the victim was housed. Appellant had worked as a law enforcement officer for thirteen years and had been employed at TWRJ for ninety days. During the evening, the victim became upset that appellant was ignoring his requests for medical attention to treat a rash on his face, and the two men exchanged verbal threats about "whip[ing]" each other. The other inmates laughed when the victim told appellant that a pork chop would fall out of his body if the victim kicked him. Appellant was three inches taller than the victim and around twice as heavy.

At about 11:00 p.m., the cell block was locked down for the night, a head count was taken, and a nurse came to give the inmates their medications. The "pill pass" procedure required appellant to stand at the open door of the cell block while inmates approached individually to receive their medications from the nurse who was located in an outer hallway adjacent to the door. According to TWRJ policy, an inmate was not allowed to walk through the open door until appellant gave him permission to do so.

Before the victim was released from his cell to get his medication, appellant told him that if he continued to curse and "c[a]me out in a bucking stance like you want to do something," appellant would "knock [him] the fuck out." The victim testified that he walked from his cell toward the open door where appellant stood, reached around the door to get his medications, and was hit by appellant. Appellant then grabbed the victim around the neck and chest and moved him into the hallway where the victim was handcuffed by three or four other officers who had been summoned for a reported "Code 13" — "inmate attacking officer." The victim suffered a broken nose, which required surgery to repair. The testimony of the medications nurse and another inmate, as well as the jail's surveillance video, which was played at trial, corroborated the victim's testimony that appellant had punched him for no apparent reason. Neither the nurse nor the other inmate described the victim as acting aggressively when he approached appellant at the open door.

Appellant testified at trial that the victim had told him when he did the head count that he had a nose bleed and appellant had responded that the victim could see the nurse at "pill pass." The appellant denied calling the victim a "cracker," but admitted saying that he would "handle" the victim if he continued to use abusive language. According to appellant, the medications nurse's testimony regarding what she had heard appellant tell the victim was "totally and utterly incorrect." Appellant testified that the victim had walked aggressively toward him and tried to pass through the open door without permission. Appellant said that he did not know what the victim's intentions were when he bumped against appellant's body in the doorway. Appellant thought that the victim could have had a weapon hidden on his person, attacked the medications nurse, or attempted to escape. According to appellant, he struck the victim with his open palm to keep him from entering the hallway but did not hit him in the face. Appellant said that he had been trained to keep inmates from getting too close to him. Appellant presented expert testimony regarding the training that law enforcement officers received in using reasonable force to defend themselves from unruly persons.

Appellant was charged with malicious wounding, but at the conclusion of all the evidence, the trial court reduced the charge to unlawful wounding and deferred a finding of guilt until sentencing. At the sentencing hearing, the Commonwealth presented evidence from appellant's personnel record from the Hampton Roads Regional Jail, where appellant had been employed from April 28, 2008 to July 9, 2016. The record showed that appellant had been reprimanded and suspended from work in 2009, 2010, 2013, 2014, and 2015 for using unnecessary force with an inmate. The record also indicated that when he resigned in July 2016, appellant was facing other charges of misconduct.

Appellant testified again at the sentencing hearing that he had not punched the victim in the face, and he argued that he had merely reacted when the victim did not follow the jail's rules and tried to walk past appellant at the open door. The trial court found appellant guilty of assault and battery. The court sentenced appellant to twelve months in jail with eleven months suspended for two years and ordered that he complete an anger management program.

The essence of appellant's argument is that the evidence was insufficient to prove that he committed assault and battery because his position as a correctional officer justified his using force against the victim under the circumstances of the incident. In making its ruling, the trial court stated that law enforcement officers "are frequently . . . allowed to put their hands on people on slighter provocation than one ordinarily would" because "they have a job to do." However, the trial court found that appellant's testimony was not credible in light of the video which clearly showed that appellant hit the victim in the nose without provocation, but appellant insisted that he had not struck the victim in that manner. The court also found that appellant's personnel record refuted his testimony that he had never punched a man in the face. The court concluded that appellant had not acted in self-defense and that his conduct toward the victim had not been appropriate because appellant had "dared" the victim to give him a reason to use force.

Appellant's version of events differed from the victim's version, which was corroborated by the video of the incident and the testimony of other witnesses. The trial court watched the video several times and saw and heard the witnesses testify, assessing their credibility by voice inflection, body language, and other non-verbal clues. The trial court acknowledged that the victim was a convicted felon but accepted his testimony as being more credible than appellant's.

The law is well established that "determining the credibility of the witnesses and the weight afforded the testimony of those witnesses are matters left to the trier of fact." Parham v. Commonwealth, 64 Va. App. 560, 565 (2015); see Commonwealth v. McNeal, 282 Va. 16, 22 (2011) (fact finder is entitled to resolve any conflicts in the evidence); see also Hill v. Commonwealth, 8 Va. App. 60, 65 (1989) (*en banc*) ("Although the testimony of felons may be impeached by evidence of their prior convictions, their testimony is competent and sufficient to support a conviction if credited by the jury."). Furthermore, the trial court was entitled to reject appellant's self-serving testimony and to conclude that he was lying to conceal his guilt. See Flanagan v. Commonwealth, 58 Va. App. 681, 702 (2011). We must defer to the court's determination, as it was not plainly wrong. See Smith v. Commonwealth, 56 Va. App. 711, 718 (2010). We thus conclude that the trial

court did not err in determining that the evidence was sufficient to convict appellant of assault and battery of the victim.

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.

It is ordered that the Commonwealth recover of the appellant the costs in this Court, which costs shall include a fee of $300 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

This Court's records reflect that the Office of the Public Defender for the City of Suffolk is counsel of record for appellant in this matter.

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Public Defender $300.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty K P. Ring

Deputy Clerk