- APPENDIX D

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 28th day of July, 2021.

Michael Alan Webb, Appellant,

against Record No. 200282
Court of Appeals No. 0789-19-1

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 the granting of an appeal, the Court refuses the petition for appeal.

The Circuit Court of the City of Williamsburg and James City County shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this Court and in the courts below.

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

Attorney's fee $950.00 plus costs and expenses

A Copy,

Teste:

Muriel-Theresa Pitney, Acting Clerk

By: Julie Hayes

Deputy Clerk

APPENDIX A

1 OF 6

VIRGINIA:

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

Michael Alan Webb, Appellant,

against Record No. 0789-19-1
Circuit Court No. CR27354-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Williamsburg and County of James City

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. A jury found appellant guilty of the first-degree murder of his mother. Appellant contends that the trial court erred by denying his motion to suppress evidence obtained by the police when they entered his residence "without a warrant, and without exigent circumstances to satisfy the emergency or community caretaker exceptions."

"When this Court reviews a trial court's ruling on a motion to suppress, 'the appellant bears the burden of showing that the ruling, when the evidence is considered most favorably to the Commonwealth, constituted reversible error.'" Scott v. Commonwealth, 68 Va. App. 452, 458 (2018) (quoting Sanders v. Commonwealth, 64 Va. App. 734, 743 (2015)). "[A]n appellate court must give deference to the factual findings of the circuit court and give due weight to the inferences drawn from those factual findings; however, the appellate court must determine independently whether the manner in which the evidence was obtained meets the requirements of the Fourth Amendment." Moore v. Commonwealth, 69 Va. App. 30, 36 (2018) (quoting Commonwealth v. Robertson, 275 Va. 559, 563 (2008)). "On appeal, a 'defendant's claim that evidence was seized in violation of the Fourth Amendment presents a mixed question of law and fact that we review *de novo*.'" Cole v. Commonwealth, 294 Va. 342, 354 (2017) (quoting Cost v. Commonwealth,

275 Va. 246, 250 (2008)). "When reviewing a denial of a motion to suppress evidence, an appellate court considers the evidence in the light most favorable to the Commonwealth and 'will accord the Commonwealth the benefit of all reasonable inferences fairly deducible from that evidence.'" Taylor v. Commonwealth, 70 Va. App. 182, 186 (2019) (quoting Sidney v. Commonwealth, 280 Va. 517, 520 (2010)).

On May 17, 2017, Mary Walker, a supervisor at Eastern State Hospital, learned that Edna Webb, one of Walker's employees, had not arrived at work that morning. Walker testified that Webb was a consistently reliable employee and that she "did not miss many days of work, and whenever she was absent, she would notify [Walker] ahead of time" to let her know that she would be out or late. Webb was scheduled to be at work at approximately 8:15 a.m. and Walker was notified around 9:00 a.m. that Webb had not arrived or called to say she would be late. Walker knew that appellant, Webb's son, had mental health problems, recently had returned home from prison, and was not taking his medication. Webb had shared with Walker "that [appellant] was making some bizarre statements" and that appellant felt like Webb "was against him." Webb also had told Walker that appellant was "restless and not well." When Walker called Webb's residence, appellant informed Walker that Webb was still asleep. Walker asked appellant to wake her up, but appellant refused. Walker also called Webb's cell phone but received no answer. Walker "was very concerned" because Webb was "very predictable and very reliable" and ordinarily would have called to say that she would be late.

Walker shared her concerns with her co-worker, Nanette Brett. Brett also called Webb's home and spoke with appellant. Appellant again stated that Webb was asleep and that he would not wake her up. Appellant told Brett that "he was having trouble with his mother and she was trying to put him out of the house." Appellant also told Brett that he had had an argument with his mother and that "they were not speaking or talking." Walker had a "bad feeling." She called the police and asked them to do a welfare check.

James City County Police Officer Brandon Frantz traveled to Webb's house to conduct the welfare check. Frantz had received the information Walker had provided to the police, including the fact that

appellant was "mentally unstable" and had not been taking his medication. Frantz arrived at Webb's house shortly before 10:00 in the morning. Frantz noted that Webb's car was parked outside her house, and he knocked on the front door. Frantz knocked four or five times without a response. Frantz "heard what [he] thought was footsteps or movements upstairs above" where he stood. Officer Slodysko arrived on the scene and walked to the back of the house. A neighbor asked Frantz if he was looking for Webb and informed him that both of Webb's cars were parked out front and that Webb "should be there unless she went off with somebody else." Frantz continued knocking until Slodysko advised him that a sliding glass door at the back of the house was unlocked. Slodysko had opened the door and called inside, but he received no response. Frantz joined Slodysko at the back of the house, and the two officers entered the residence through the sliding glass door.

The door led to the kitchen, and Frantz immediately noted that the floor was soapy as if someone had been cleaning it. Frantz then saw a body wrapped in a blanket underneath trash bags. The body was later identified as Webb's.

Appellant argues that the evidence found in the residence should have been suppressed because the police entered the house without a warrant. "Searches and seizures conducted without a warrant are presumptively invalid." Knight v. Commonwealth, 61 Va. App. 297, 306 (2012). "However, there are a number of functions that police routinely perform that are outside of their duty to investigate crimes, and apprehend those suspected of committing them. These functions are broadly referred to as the 'community caretaking' functions of the police." Cantrell v. Commonwealth, 65 Va. App. 53, 59 (2015). "Because these functions do not involve the investigation of criminal activity, when they are properly performed by the police, a search warrant may not be necessary when these community caretaking functions are being carried out." Id. The community caretaker exception "recognizes that 'police owe "duties to the public, such as rendering aid to individuals in danger of physical harm, reducing the commission of crimes through patrol and other preventive measures, and providing services on an emergency basis."'" Kyer v. Commonwealth, 45 Va. App. 473, 480-81 (2005) (*en banc*) (quoting Reynolds v. Commonwealth, 9 Va. App. 430, 436

(1990)). When an exception is claimed under the community caretaker doctrine, the claim "must be scrutinized to insure that it is not mere pretext for entries and searches that otherwise fall under the requirement for a warrant." Reynolds, 9 Va. App. at 438 (quoting State v. Monroe, 611 P.2d 1036, 1040 (Idaho 1980), vacated on other grounds, 451 U.S. 1014 (1981)). "It is well established that '[o]bjective reasonableness remains the linchpin of determining the validity of action taken under the community caretaker doctrine.'" Cantrell, 65 Va. App. at 64 (quoting King v. Commonwealth, 39 Va. App. 306, 312 (2002)).

Here, the police traveled to Webb's house after Walker informed them that the dependably punctual Webb had not arrived at work and had not called to say she would be late. Walker also reported that appellant recently had returned home, had been acting bizarrely, and had expressed the feeling that Webb was "against him." Appellant had claimed that Webb was asleep upstairs but refused to attempt to wake her despite Walker's and Brett's urging that they needed to speak with her. When the police arrived at the house, they found Webb's vehicles at the residence. Despite repeated knockings and the sound of footsteps within the house, no one answered the front door or Slodysko's calls from the rear of the house. The trial court found that "it is wholly reasonable under these circumstances [for the police] to go inside that house" and conduct a welfare check. The record supports the trial court's conclusion that the police lawfully entered the house under the community caretaker exception to the warrant requirement. Therefore, we find no error with the trial court's denial of appellant's motion to suppress.

II. Appellant contends that the trial court erred "when it found that [he] held the mental competency to represent himself at trial in violation of his Sixth Amendment right to a fair trial."

"The Sixth Amendment guarantees a criminal defendant 'the Assistance of Counsel for his defence.'" Edwards v. Commonwealth, 49 Va. App. 727, 734 (2007) (quoting U.S. Const. amend. VI). "This textual right, it has been held, 'implies' the concomitant right to be unassisted by counsel." Id. (quoting Faretta v. California, 422 U.S. 806, 821 (1975)). "Whether a waiver is voluntary and competent depends upon the particular circumstances of each case, including the defendant's background, experience, and conduct, but no

particular cautionary instruction or form is required." Watkins v. Commonwealth, 26 Va. App. 335, 343 (1998) (quoting Church v. Commonwealth, 230 Va. 208, 215 (1985)). "The primary inquiry . . . is not whether any particular ritual has been followed in advising the defendant of his rights and accepting his waiver, but simply whether the procedures followed were adequate to establish 'an intentional relinquishment of the right to counsel, known and understood by the accused.'" Edwards v. Commonwealth, 21 Va. App. 116, 125 (1995) (quoting Kinard v. Commonwealth, 16 Va. App. 524, 527 (1993)). The Commonwealth bears the burden of showing that a *pro se* defendant has "competently, intelligently, and understandingly waived his right to counsel." Id. at 123-24. In reviewing this issue, we give deference to the trial court's subsidiary findings of fact and "review the ultimate Sixth Amendment question *de novo*." Edwards, 49 Va. App. at 740.

The trial court heard argument on appellant's motion to represent himself on February 21, 2018. Previously, the trial court had "a long discussion" with appellant about self-representation at a hearing on January 24, 2018. Appellant maintained that he wished to represent himself at his trial and signed the waiver of counsel form during the February hearing.

Appellant argues that he "did not knowingly and intelligently waive his right to counsel as he lacked the mental capacity to represent himself at trial because he suffered from severe mental illness and did not possess the functional legal capacity for self-representation."

Appellant did not file the transcript from the January 24, 2018 hearing during which the trial court addressed the perils of self-representation. Appellant also did not file a written statement of facts in lieu of a transcript. See Rule 5A:8(a) and (c). The Court will consider only those issues that may be decided without reference to a transcript or statement of facts.

We have reviewed the record and the petition for appeal. We conclude that a timely filed transcript or written statement of facts from the January 24. 2018 hearing is indispensable to a determination of this assignment of error raised on appeal. See Smith v. Commonwealth, 32 Va. App. 766, 772 (2000); Turner v. Commonwealth, 2 Va. App. 96, 99-100 (1986). Thus, appellant has failed to ensure that the record contains a

transcript or written statement of facts necessary to permit us to resolve the issue he presents on appeal. Rule 5A:8(b)(4)(ii). Therefore, we deny the petition for appeal.

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 trial court shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. The Commonwealth shall recover of the appellant the costs in this Court and in the trial court.

This Court's records reflect that Brandon C. Waltrip, Esquire, is counsel of record for appellant in this matter.

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

Attorney's fee $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty K P. Ring

Deputy Clerk

APPENDIX G

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of August, 2021.

Michael Allan Webb, Appellant,

against Record No. 200968
Circuit Court No. CL20000423

B.L. Kanode, Warden, Appellee.

From the Circuit Court of the City of Williamsburg and James City County

On June 21, 2021 and July 12, 2021 came the appellant, who is self-represented, and filed a motion to strike and a motion for extension of time to file his petition for rehearing, respectively, in this matter.

Upon consideration whereof, the Court denies the motions.

A Copy,

Teste:

Muriel-Theresa Pitney, Acting Clerk

By: Deputy Clerk

EXHIBIT: F

R 170098

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

COMMONWEALTH OF VIRGINIA,

v.

MICHAEL ALAN WEBB,
Defendant.

ORDER

Upon the Motion of the Defendant and for good cause shown, it is hereby ORDERED that a Court Reporter be provided to the Defendant to transcribe the events of Preliminary Hearing scheduled in the Juvenile and Domestic Relations District Court of the City of Williamsburg related to the prosecution of case JA017867-02-00 or any other matter.

The Clerk of the Juvenile and Domestic Relations District Court of the City of Williamsburg is further ORDERED to schedule the appearance of such Court Reporter for all hearings and incidents involved in this case. The Clerk of the Williamsburg Circuit Court shall mail a copy of this ORDER postage prepaid to J. Terry Osborne, Esquire, at P.O. Box 181, King William, Virginia 23086 and deliver to Nate Green, Esquire, at 5201 Monticello Avenue, Williamsburg, Virginia 23188 upon entry. The costs of such Court Reporter shall be taxed against Defendant as court costs in the event that Defendant is convicted of the offense charged.

ENTER 6/2/17

Judge

We Ask For This

J. Terry Osborne, Esquire

Seen / Agreed

Nate Green, Esquire

VIRGINIA: CIRCUIT COURT OF THE CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY:
I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION IS AFFIXED IS A TRUE COPY OF A RECORD IN THIS COURT AND I AM THE CUSTODIAN OF THAT RECORD.
MONA A. FOLEY, CLERK
BY: _____ Dep. Clerk

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