

Appendix A (A.1)

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 5th day of May, 2023.

Euphrates Earl Bean,

Appellant,

against

Record No. 230020

Court of Appeals No. 0307-22-1

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 Norfolk 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

\$850.00 plus costs and expenses

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

Muriel-Theresa Pitney

Deputy Clerk

COURT OF APPEALS OF VIRGINIA

Appendix B(B.1)

Present: Judges Humphreys, AtLee and Raphael

EUPHRATES EARL BEAN

v. Record No. 0307-22-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION*
PER CURIAM
DECEMBER 13, 2022FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
Jerrauld C. Jones, Judge(Kristin Paulding; 7 Cities Law, on brief), for appellant. Appellant
submitting on brief.(Jason S. Miyares, Attorney General; Matthew J. Beyrau, Assistant
Attorney General, on brief), for appellee.

Following a bench trial, the City of Norfolk Circuit Court convicted Euphrates Earl Bean of two counts of aggravated malicious wounding, in violation of Code § 18.2-51.2, and two counts of use of a firearm in the commission of felony, in violation of Code § 18.2-53.1. Bean asserts on appeal that the evidence was insufficient to support the convictions. After examining the briefs and record in this case, the panel unanimously holds that oral argument is unnecessary because “the appeal is wholly without merit.” Code § 17.1-403(ii)(a); Rule 5A:27(a). Bean failed to timely file a transcript, or statement of facts in lieu of a transcript, necessary to the appeal pursuant to Rule 5A:8. As a result, we cannot reach his assignments of error and affirm his convictions.

BACKGROUND

Following an altercation that occurred in the city of Norfolk on August 29, 2019, Norfolk Police Detective T. Ostulano obtained criminal warrants charging Bean with two counts of

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

malicious wounding and two counts of use of a firearm in the commission of a felony.

Ostulano's accompanying criminal complaint asserted:

B.2

On 08/29/19 at 2101 hours, the Norfolk Police Department, along with Norfolk Fire & Rescue, responded to the 2900 block of Pershing Avenue for a shooting in progress. Upon arrival, emergency personnel located Euphrates Bean, Jedidiah Patterson, and Brian Thigpen suffering from gunshot wounds. Three separate medic units transported all the gunshot victims to Sentara Norfolk General Hospital. Witnesses stated that Euphrates Bean came out of 3240 Lyons Ave. Apt B to confront the victims for being too loud. He began taking pictures of the license plate of a car belonging to one of the victims. A verbal altercation ensued between them and the argument escalated when Bean pulled out a hand gun and began shooting at the victims. Bean shot himself in the leg in the process. Victims were not armed at the time of the incident.

Thereafter, a Norfolk grand jury issued indictments for each offense.¹

Following a bench trial, the circuit court convicted Bean of two counts of aggravated malicious wounding and two counts of use of a firearm in the commission of a felony. By final order dated December 9, 2021, the circuit court sentenced Bean to 48 years in prison, with 30 years suspended. Bean's attorney filed a notice of appeal on December 20, 2021. The notice of appeal indicated that Bean would pursue his appeal *pro se* and stated that Bean had not yet ordered the transcript from the court reporter who reported the case. On March 10, 2022, the Norfolk Circuit Court transmitted the record to this Court. The trial and sentencing transcripts were not included in that transmission.

ANALYSIS

On appeal, Bean asserts that the circuit court erred in finding the evidence sufficient to prove he committed aggravated malicious wounding because the Commonwealth's evidence

¹ The Commonwealth added indictments for aggravated malicious wounding, and later the circuit court granted a motion for *nolle prosequi* and dismissed the indictments for malicious wounding.

B.3

failed to show that he acted with the requisite malice. He also asserts that the evidence failed to support the convictions for the firearm offenses because he did not commit the underlying felonies. We do not reach the merits of Bean's contentions, however, because he failed to file a transcript, or written statements of facts in lieu of a transcript, necessary for our review.

"The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court no later than 60 days after entry of the final judgment." Rule 5A:8(a). "When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission will not be considered." Rule 5A:8(b)(4)(ii). Indeed, if "the transcript [or statement of facts] is indispensable to the determination of the case, then the requirements for making the transcript [or statement of facts] a part of the record on appeal must be strictly adhered to." *Bay v. Commonwealth*, 60 Va. App. 520, 528 (2012) (alterations in original) (quoting *Turner v. Commonwealth*, 2 Va. App. 96, 99 (1986)). "This Court has no authority to make exceptions to the filing requirements set out in the Rules." *Shiembob v. Shiembob*, 55 Va. App. 234, 246 (2009) (quoting *Turner*, 2 Va. App. at 99).

Bean filed the transcripts in the circuit court on April 4, 2022, more than 60 days after entry of the final judgment on December 9, 2021. Notably, Bean did not file a motion for extension of time in which to file the transcripts. See Rule 5A:8(a). Thus, the transcripts were neither timely filed in the circuit court, nor included in the record. Because Bean challenges the sufficiency of the evidence supporting his convictions, a transcript of the proceedings is required for our evaluation of that evidence. Without a transcript or written statement of facts, we are unable to address Bean's contentions. Therefore, we conclude that timely-filed transcripts, or a written statement of facts in lieu of a transcript, are indispensable to a determination of the

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assignments of error presented in Bean's appeal. *See Smith v. Commonwealth*, 32 Va. App. 766, 772 (2000); *Turner*, 2 Va. App. at 99-100.

Because Bean failed to ensure that the record contained a timely-filed transcript, or written statement of facts in lieu of a transcript, we are unable to resolve the assignments of error. Rule 5A:8(b)(4)(ii). Consequently, we affirm the convictions.

CONCLUSION

For the foregoing reason, the circuit court's judgment is affirmed.

Affirmed.

VIRGINIA:

Appendix C (C.1)

In the Court of Appeals of Virginia on Tuesday the 28th day of June, 2022.

Euphrates Earl Bean,

Appellant,

against

Record No. 0307-22-1

Circuit Court Nos. CR19002258-02 through CR19002258-05

Commonwealth of Virginia,

Appellee.

From the Circuit Court of the City of Norfolk

On June 27, 2022 came the appellant, by court-appointed counsel, and filed a motion requesting that the Court grant him an extension of time to file an amended opening brief with the clerk of this Court.

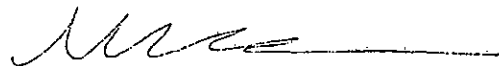
On consideration whereof, an extension of time is granted the appellant until August 3, 2022 to file the amended opening brief in this case.

A Copy,

Teste:

A. John Vollino, Clerk

By:



Deputy Clerk

COURT OF APPEALS OF VIRGINIA
100 N 9TH ST
RICHMOND, VA 23219
804-786-5651

COURT OF APPEALS OF VIRGINIA

Date: 03/03/2022 10:12:56 AM

CREDIT CARD SALE

VISA

CARD NUMBER: *****5282 K

TOTAL AMOUNT: \$52.00

APPROVAL CD: 003791

ECI:

RECORD #: 000

CLERK ID: cawhite

X

Annie Bean

I AGREE TO PAY THE ABOVE TOTAL AMOUNT
ACCORDING TO THE CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

Merchant Copy

Appendix D(D.1)

Criminal Complaint
Commonwealth of Virginia

RULES 3A:3 AND 7C3

Appendix E(E.2)

Print ALL information clearly:

NORFOLK

City or County

☐

Juvenile and Domestic Relations District Court

☒

General district Court

Under penalty of perjury, I, the undersigned Complainant swear of affirm that I have reason to believe that the Accused committed a criminal offense, on or about

8/29/2019

Date Offense Occurred

In the

☒

County

☐

Town

☐

Of NORFOLK, VA

I base my belief on the following facts:

08/29/19 at 2101 hours, the Norfolk Police Department, along with Norfolk Fire & Rescue, responded to the 2900 ck of Pershing Avenue for a shooting in progress. Upon arrival, emergency personnel located Euphrates Bean, idian Patterson, and Brian Thiigen suffering from gunshot wounds. Three separate medic units transported all the shot victims to Sentara Norfolk General Hospital. Witnesses stated that Euphrates Bean came out of 3240 Lyons Ave. to confront the victims for being too loud. He began taking pictures of the license plate of a car belonging to one of victims. A verbal altercation ensued between them and the argument escalated when Bean pulled out a hand gun and an shooting at the victims. Bean shot himself in the leg in the process. Victims were not armed at the time of the ident.

he statements above are true and accurate to the best of my knowledge and belief.

In making this complaint, I have read and fully understand the following:

- By swearing to these facts, I agree to appear in court and testify if a warrant or summons is issued.
- The charge in this warrant cannot be dismissed except by the court, even at my request.

let T. Ostlano

NAME OF COMPLAINANT (LAST, FIRST, MIDDLE)
(PRINT CLEARLY)

SIGNATURE OF COMPLAINANT

Subscribed and sworn to before me this day.

DATE AND TIME

3:11 10/97 PC(114:3-010 08/07)

☐ CLERK ☐ MAGISTRATE ☐ JUDGE

CRIMINAL COMPLAINT

ACCUSED: Name, Description, Address/Location

Bean, Euphrates Earl
3240 Lyons Av Apt B, Norfolk, VA
23509

LAST NAME, FIRST NAME, MIDDLE NAME

COMPLETE DATA BELOW IF KNOWN

RACE B/ SEX M. /DOB 12/04/79 HT. 6'02/ WGT. 325 /EYES
BRO/HAIR BLK

SSN 419-11-1720

E.2

Case Summary

Offense: Malicious Wounding

IBR#: 190829154901

Date: 08/29/19

Time: 2101

Location: 2900 blk Pershing Ave.

Victim (s):

Patterson, Jedidiah O. (B/M/42) *No Gang Affiliation*
Thigpen, Brian A. (B/M/45) *No Gang Affiliation*

Defendant (s):

Bean, Euphrates E. (B/M/39) *No Gang Affiliation*

Weapon (s): Firearm

PD 802 Completed: Yes

Narrative: On 08/29/19 at 2101 hours, the Norfolk Police Department, along with Norfolk Fire & Rescue, responded to the 2900 block of Pershing Avenue for a shooting in progress.

- Upon arrival, emergency personnel located Euphrates Bean, Jedidiah Patterson, and Brian Thigpen suffering from gunshot wounds.
 - Medic 10, Medic 11, and Medic 14 transported all the gunshot victims to Sentara Norfolk General Hospital.
 - Bean, Patterson, and Thigpen are considered critical life-threatening and currently still in surgery.
- Witnesses were located and interviewed.
 - Witnesses observed Bean shooting in the direction of Patterson and Thigpen.
 - Witnesses stated Bean made statements that he shot himself accidentally.
 - Witnesses observed only Bean shooting.
 - Witnesses stated Bean took pictures of a parked vehicle located in the street, which caused a verbal argument with a group of individuals, that resulted in Bean shooting into the group.
- Forensics responded to the scene.
 - Glock 29 10mm recovered.
- Euphrates Bean was charged with Malicious Wounding x 2 and UFA x 2.
 - Bean is currently admitted at Sentara Norfolk General Hospital.
- Bean was released from the hospital on Saturday, August 31 and transported to the Police Operation Center where he was advised of

his legal rights. However, he refused to make any statements and requested a lawyer.

- He was brought before the magistrate and later transferred over to booking.

Investigator(s): T. Ostulano & M. J. Walsh

~~APP~~ Appendix F(F-1)

Notes

The amendment effective July 1, 2015, adopted April 10, 2015, substituted "documents" for "original papers" in subdivision (a) (1) and deleted "the original draft or a copy of" at the beginning of subdivision (a) (4).

The amendment effective March 1, 2021, promulgated November 23, 2020, clarified the meaning of the word "shall" formerly appearing in the rule.

CASE NOTES

The Court of Appeals is not restricted by § 8.01-675.4 to ordering only those portions of the appellate record as defined by the Rules of Court. Watkins v. Commonwealth, 26 Va. App. 335, 494 S.E.2d 859, 1998 Va. App. LEXIS 23 (1998).

★ Absence or late filing of transcript does nothing to diminish jurisdiction. — If the record on appeal is sufficient in the absence of the transcript to determine the merits of the appellant's allegations, the court is free to proceed to hear the case. Turner v. Commonwealth, 2 Va. App. 96, 341 S.E.2d 400, 1986 Va. App. LEXIS 247 (1986).

★ Timely filing of transcript is not mandatory. — Unlike the Supreme Court Rule 5:5(a), Rule 5A:3(a) contains no language which makes the time for filing of the transcript mandatory. Likewise, this rule does not require that the transcript be made a part of the record on appeal. This rule states that the transcript will be included in the record on appeal if it is properly made a part of the record in accordance with the provisions of Rule 5A:8. There is nothing in the Rules which makes timely filing of the transcript mandatory; rather, the clear objective of these Rules is to ensure that an accurate record, complete to the degree necessary to adjudicate the appeal, is transmitted to the court. Turner v. Commonwealth, 2 Va. App. 96, 341 S.E.2d 400, 1986 Va. App. LEXIS 247 (1986).

Requirements for including transcript in record must be strictly adhered to. — If the transcript is indispensable to the determination of the case, then the requirements for making the transcript a part of the record on appeal must be strictly adhered to. The Court of Appeals has no authority to make exceptions to the filing requirements set out in the Rules. Turner v. Commonwealth, 2 Va. App. 96, 341 S.E.2d 400, 1986 Va. App. LEXIS 247 (1986).

This Rule did not contemplate inclusion of the transcribed depositions as part of the instant record on appeal; proofs and other exhibits were not properly offered and received into evidence. Skeen v. Skeen, 2001 Va. App. LEXIS 470 (Va. Ct. App. Aug. 2, 2001).

objection that it does not allege any assault, striking or wounding, nor that P.T. was within the county or jurisdiction, nor that the intent was felonious or malicious. Commonwealth v. Woodson, 36 Va. (9 Leigh) 669 (1839).

Indictment charging that accused made an assault with a stone, and did feloniously, maliciously and unlawfully beat, wound, ill-treat and cause bodily injury, etc., sufficiently conforms to this section. Jones v. Commonwealth, 87 Va. 63, 12 S.E. 226 (1890).

B. DEFENSES.

SELF-DEFENSE. --A person assaulted while in the discharge of a lawful act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary, and is not compelled to retreat from his assailant, but may, in turn, become the assailant, inflicting bodily wounds until his person is out of danger. Jackson v. Commonwealth, 96 Va. 107, 30 S.E. 452 (1898). See Stoneman v. Commonwealth, 66 Va. (25 Gratt.) 887 (1874); Brown v. Commonwealth, 86 Va. 466, 10 S.E. 745 (1890); Montgomery v. Commonwealth, 99 Va. 833, 37 S.E. 841 (1901).

An instruction which failed to point out that self-defense is not available to the aggressor was properly refused. Banner v. Commonwealth, 204 Va. 640, 133 S.E.2d 305 (1963).

Where an accused responds to a threat of harm from another and the amount of force the accused uses is reasonable in relation to the harm threatened, the accused may be acquitted based on self-defense. Thornton v. Commonwealth, No. 2579-99-1, 2000 Va. App. LEXIS 794 (Ct. of Appeals Dec. 5, 2000).

If a wounding remains unlawful but results from the heat of passion, such as rage or fear, rather than malice, it constitutes unlawful wounding rather than malicious wounding. Thornton v. Commonwealth, No. 2579-99-1, 2000 Va. App. LEXIS 794 (Ct. of Appeals Dec. 5, 2000).

Because defendant's daughter testified that defendant neither initiated nor provoked a fight with the victim, the trial court erred in denying defendant's proffered instruction on self-defense without fault; consequently, defendant was entitled to a new trial for malicious wounding. Sanders v. Commonwealth, 2005 Va. App. LEXIS 386 (Oct. 4, 2005).

Assuming that the trial court erred by excluding evidence regarding the victim's specific incidents of prior violent conduct to establish his character for turbulence and violence and to corroborate defendant's evidence that he acted in self-defense, any error was harmless because the Commonwealth presented overwhelming evidence that defendant did not act in self-defense; none of the victim's actions justified defendant crossing the street and physically attacking him in his driveway. Arehart v. Commonwealth, 2014 Va. App. LEXIS 190 (Mar. 20, 2014).

Circuit court properly convicted defendant of unlawful wounding because defendant was not acting in self-defense inasmuch as he was at least partially at fault in creating the incident, his actions in repeatedly kicking the victim were not a reasonably apparent necessity to save defendant from great bodily harm, and defendant did not prove that he retreated as far as possible or announced his desire for peace. Murphy v. Commonwealth, 2017 Va. App. LEXIS 195 (Aug. 8, 2017).

Trial court reasonably determined that defendant was the initial aggressor in the fight, having threatened to kill everyone in the home prior to the commencement of the altercation, plus he wielded a knife throughout the altercation, which resulted in significant injuries suffered by both of his younger brothers. It was not plainly wrong for the trial court to find that defendant did not act in self-defense. Gram v. Commonwealth, No. 0728-19-4, 2020 Va. App. LEXIS 55 (Mar. 3, 2020).

DEFENSE OF OTHERS. --In order to justifiably defend another, the defendant must reasonably believe that the person being defended was free from fault; whether the defended person was, in fact, free from fault is legally irrelevant to the defense. Foster v. Commonwealth, 13 Va. App. 380, 412 S.E.2d 198 (1991).

The law pertaining to defense of others is that one may avail himself or herself of the defense only where he or she reasonably believes, based on the attendant circumstances, that the person defended is without fault in provoking the fray. Foster v. Commonwealth, 13 Va. App. 380, 412 S.E.2d 198 (1991).