

No. _____

ORIGINAL

25-7366

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 23 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN TUCKER HARDEE — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

VIRGINIA COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN TUCKER HARDEE
(Your Name)

NOTTOWAY CORRECTIONAL (*mailing address: 3521 WOODS WAY)
(Address)

STATE FARM, VA. 23160
(City, State, Zip Code)

(434)767-2908
(Phone Number)

QUESTION(s) PRESENTED

- **How can trial Court grant motion **in limine** for past bad acts, when there's no evidence that ties Petitioner to those injuries; only that injuries merely happened to H.W.
- **Commonwealth intentionally used fabricated, doctored false evidence (screenshot embedded in text messages **rather than (2) videos**) but motion **in limine** and at trial.
- **How can Commonwealth use an inter student from Eastern Virginia Medical School as an expert.
- **Commonwealth blind-sided Petitioner with testimony of a witness (Robert "Nicholson"), when he was never informed of their intentions to call him as a witness. He was bias and had a clear conflict/ financial interest to testify in bad faith to avoid civil liability.
- **How can Commonwealth present known false evidence, and known perjury by a co-defendant; testifying that she did 'nt know medical; and did 'nt receive payment/leniency for her testimony, which were both lies.
- **Commonwealth and trial Court illogically claimed Petitioner held H.W. down in porcelain bathtub; she had burns to her back and buttocks, **which would be impossible for her to burn**, as those body parts would be **suctioned to the porcelain bottom without a grip pad in the bathtub**.
- **Norfolk EMT Julie ("Hughes") claimed to have administered **Midazolam Hydrochloride (Versed)**-a barbiturate, benzodiazepine, sedative, and anti-seizure medication. However, Toxicologist, Connie ("Luckie") said the medication was **not detected in H.W.'s body and would have been present**.
- **Norfolk EMT's failed to administer the medication, and failed to intubate H.W.; creating **Acute Hypoxic Ischemic Changes** to her brain. Petitioner did 'nt cause this Hypoxia to her brain. City of Norfolk is responsible **for H.W.'s death. Had they intubated, she would be alive today**.
- **Nicholson and employees failed to maintain hot water heater in a safe manner, which violated the International, United States, and Virginia applicable Plumbing Codes. The water **exceeded the maximum safe temperatures of 120°F**. The water heater in Petitioner's home **did not have a stop-limit device** at the heater or subject water faucet. If it did, it would have **been impossible for H.W. to have received her second degree scald burns**.
- **As a result, Virginia Natural Gas ("Va. Nat. Gas"), City of Norfolk, and Sandy Beach Apartments owner, Nicholson, are responsible for H.W.'s burns; by removing the "Red Tag" **without performing proper inspection for compliance**; replacing the gas valve without pulling a permit; and by not adding **stop-limit device**, allowed **unforeseeable and illegal temperatures to soar above 130°F and 134°F**.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

:COMMONWEALTH OF VIRGINIA V. JOHN T. HARDEE, CR18-2385,CITY OF NORFOLK CIRCUIT COURT, SENTENCED MAY 26,2023;JUDGEMENT ENTERED JUNE 7,2023.

:HARDEE V. COMMONWEALTH OF VIRGINIA, NO.0969-23-1,COURT OF APPEALS OF VIRGINIA, JUDGMENT ENTERED JANUARY 14,2025.

:HARDEE V. COMMONWEALTH OF VIRGINIA, NO.250114, SUPREME COURT OF VIRGINIA, JUDGMENT ENTERED SEPTEMBER 4,2025.

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Petitioners Appeal case, Hardee v. Commonwealth, 2025 Va.App. LEXIS 11 (Va.App. 1/14/25)

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
OPINIONS BELOW

state court:

The opinion of the highest state court to review the merits appears at Appendix
 A to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the NORFOLK CIRCUIT COURT (pages 417-430) court appears at Appendix B
to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported;
 is unpublished.

JURISDICTION

cases from state courts:

The date on which the highest state court decided my case was 9/4/25 . A copy of
that decision appears at Appendix C .

A timely petition for rehearing was thereafter denied on the following date:
_____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file for a writ of certiorari was granted to and including
 2/1/26 (date) on 12/9/25 (date) in the following
Application No 25 A 654 .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*Va. Code § 18.2-371.1 Abuse and neglect of children;penalty;abandoned infant. (p.23-24)

*Va. Code §18.2-33 Felony Homicide. (p. 26-27).

*Va. Code §18.2-51 Shooting,stabbing,etc.,with intent to maim,kill,etc. (p.17-18).

*Va. Code §18.2-36 How Involuntary Manslaughter is punished. (p. 29).

*Va. Rules of Evidence 2:607 (a) (i), (a) (v), and (a) (vi) Impeachment of Witnesses.

(a) In general-Subject to the provisions of Rule 2:403, the credibility of a witness may be impeached by any party other than the one calling the witness, with any proof that is relevant to the witness's credibility. Impeachment may be undertaken, among other means, by:

(i) introduction of evidence of the witness's bad general reputation for the traits of truth and veracity, as provided in Rule 2:608(a) and (b);(p. 9)

(v) evidence of bias as provided in Rule 2:610;(p. 8)

(vi) prior inconsistent statements as provided in 2:613.(p. 9)

*12 Va. Administrative Code § 5-31-990 False Statements or subissions. (p. 28)

*12 Va. Administrative Code §5-31-1000 Falsification of Materials. (p.28)

*12 Va. Administrative Code §5-31-1070 Extraordinary Care Outside Protocols. (p. 29)

*Va. Code §19.2-324.1 Erroneously admitted evidence;appeal. (p.15)

*Va. Supreme Court Rule 3A:15 Motion to Strike or to Set Aside Verdict, Judgment of Acquittal or New Trial. **(b) Motion to Set Aside Verdict.**- If the jury returns a verdict of guilty, the court may, on motion of the accused made not later than 21 days after entry of final order, set aside the verdict for error committed during trial or if the evidence is insufficient as a matter of law to sustain a conviction. (p. 23,26).

*Va. Supreme Court Rule 2:403 Rules of Evidence, Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, Misleading the Jury, or Needless Presentation of Cumulative Evidence. Relevant evidence may be excluded if:

(a) the probative value of the evidence is substantially outweighed by (i) the danger of unfair prejudice, or (ii) its likelihood of confusing or misleading the trier of facts; or **(b)** the evidence is needlessly cumulative. (p. 14).

*Va. Supreme Court Rule 2:404(b) Rules of Evidence, Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes. (p. 14).

*Va. Code §55-248.13 Residential Landlord & Tenant Act, Landlord Obligations. (p. 2, 19 & 20) (See Pet. Ex. 23-Ron George Report, p. 9-10)

*International Plumbing Code § 423.3 Maximum Safe Temperature for Tub/Shower Valves Set to 120°F. (*Note: Adopted by Virginia's Construction/Plumbing Code (2009) (2012)*) (Pet. Ex. 23, p. 12-13) (Pet. Ex. 23.B, p. 4-5).

STATEMENT OF THE CASE

April 24, 2018, and May 1, 2018 John Tucker Hardee ("Petitioner"), was charged with Child Neglect (§18.2-371.), Aggravated Malicious Wounding (§18.2-51.2). October 16, 2018, both charges are certified. November 7, 2018, he's indicted for Felony Homicide (§18.2-33) and Malicious Wounding (§18.2-51) and 2nd Degree Murder (§18.2-32). (R.117-19). July 12, 2022, a 2-day bench trial is held, and Commonwealth **nolle prossed** (§18.2-51). When Commonwealth rested, Petitioner motioned to strike (§18.2-51.2) and (§18.2-32). He's found guilty of (§18.2-51), (§18.2-371.1) and (§18.2-33). (R.788-89).

Motion to Set Aside Verdict was filed for insufficient evidence on (§18.2-371.1) and (§18.2-33). (R.975-84). May 26, 2023, that motion was denied, and Petitioner was sentenced to 35 years. (R.1847-48). January 14, 2025, Virginia Court of Appeals affirmed his convictions. September 4, 2025, Virginia Supreme Court denied petition for appeal.

STATEMENT OF FACTS

April 2018, Shelby Rae ("Love"), her daughter H.W., Petitioner, his son T.H., and roommate, Timothy ("Lineberry"), lived at ("Sandy Beach") Apartments. Sandy Beach is managed by Gifford Management Group ("GMG"), and owned by Robert ("Nicholson"). April 23, 2018, Petitioner took T.H. to school. H.W. was with them. He went to buy paint supplies for a job, and payed bills that were subjected to be disconnected. (Pet.Ex.1:HRUBS water bill). He stopped at 7-ELEVEN to but H.W. a slurpee.

H.W. spilled the drink on her outfit, and an unscheduled bath took place. He put H.W. in the bath, but there was 'nt any hot water. He saw the pilot was 'nt lit, so he relit it, and waited 20 minutes - as maintenance advised him to do. He put H.W. back in the bath, checked the temperature, poured baby soap in the water, when he heard his cellphone chime in the kitchen, where it was charging. He texted a home owner about a job, began to call HRUBS to give them payment info, when H.W. screamed. He saw steam and H.W. flailing trying to get out og the bath. The bathtub had no grip-pad, and could 'nt get out fast enough.

In previous months, complaints were documented to GMG about the water heater pilot not staying lit; hot water and heat going out; and Love and Petitioner telling maintenance to turn the hot water temperature down when they arrived. The last complaint

to GMG was March 5, 2018. (Pet. Ex. 2, p. 2-4). February 9, 2018, Virginia Natural Gas ("Va. Nat. Gas") entered Petitioner's home, and placed a "RED TAG" on the water heater. A notice was sent To City of ("Norfolk") and Sandy Beach to correct the pilot controller, and Nicholson replaced the gas valve February 26, 2018 - prompting Norfolk to close case on March 6, 2018. Replacing the gas valve affected the plumbing system temperatures, which required readjustment of the maximum safe temperature limit at all faucets- as fixtures may not exceed 120°F. International Plumbing Code §423.3. (adopted by Virginia Construction. Plumbing Code). Had Nicholson readjusted, it would've been impossible for H.W. to be burned.

Petitioner layed H.W. on his chest with a wet towel under her, and texted Love, "[G]oing to prison." Love: "What's going on John." Petitioner: "Hurry home." (Pet. Ex. 3, p. 1). Love arrived and saw splash marks. Love doused H.W. with Apple Cider Vinegar. (R. 1603-06). Contrary to Love's testimony, she wanted to treat H.W. at home-since she was in medical school. *1* Love told Petitioner to contact his friend Samantha ("Slaughter"), a nurse; who said treat H.W. at home unless she became ill. (R. 1604-08). Love sent him to CVS at 6:20 PM to buy supplies. (Comm. Ex. 24 & 26) *2* A pharmacist walked the aisles with him:

(Text to Love, 7:24 PM): "They do 'nt have the gauze we want but the pharmacist is pointing out the good stuff. Be back soon." (Pet. Ex. 3, p. 1). (Nine minutes sooner, Love texts boss, ("Dottie"), at Virginia Beach Human Sevices, lying, that H.W. was at hospital): "They cleaned her[,] wrapped her in Vaseline covered gauze. . . . the place I live said the. . . heater is 'nt supposed to. . . get that hot. . . ." (Id. p. 3). (To Petitioner at 7:25 PM): "Okay grab big tub of Vaseline too." (Id. p. 1).

Love was controlling the narrative. Petitioner then admitted to Love at 7:33 PM:

"It's my fault for walking out but I ca'nt take fault for that water turning hot for no reason. But if you still want to go to hospital I will take the responsibility." (Id. p. 2).

Love still did'nt act. Petitioner came home at 7:45 PM with items they told him to buy. *3* Love sent him to walgreens to get "Vaseline, ensure, Tylenol. . . pain relief gel. . . You got's this." (Id. p. 2 10:05 PM). Petitioner was gone another 45 minutes.

Love continued to apply Vinegar to H.W.'s burns, while Petitioner assisted with

***1* Petitioner knew Love's online courses in medical school, but she concealed her graduation one day prior, April 22, 2018 (SEE Pet. Ex. 4 & 5) proving graduation, perjury, and Commonwealth knowingly using false evidence at trial.**

***2* Love did'nt call 911 or go to hospital.**

***3* Lidocaine burn gel, Children's Tylenol, Vaseline, petroleum jelly, gauze.**

burn gels and gauze. (R.1604-09). The gels were applied every 2 hours, soothing H.W., until around 3:30 AM, she began seizing. Petitioner called 911. (R.1313). Norfolk EMT's arrived at 3:44 AM, and Love gave H.W. to EMT Julie ("Hughes"). Hughes testified that H.W. was "grunting while breathing, seizing....". Hughes claims they administered **Midazolam Hydrochloride (Versed) for the seizure.** (Pet. Ex. 6, p. 2 & 3). *4* Attorney, Eric ("Korslund") asked Hughes, "[t]o your knowledge was [H.W.] given... sedatives?" Hughes: "Not to my knowledge." (Id. p. 4). A EMT since 1998, she should know the medication is a sedative, used in lethal injections. *5* If the medication was administered, **it would've been in H.W.'s body.**

Toxicologist, Connie ("Luckie"), was sent samples of H.W. (Pet. Ex. 7, p. 3-4). *6* Luckie testified high levels of Lidocaine were in H.W.'s system. She opined, Lidocaine in burn gels absorb fast when skin is detached. (Id.) Petitioner had Korslund ask Luckie:

"Were you asked to test... for... antiseizure medications or... sedatives... in [H.W.'s] system." Luckie: "[B]arbiturate class of drugs that was screened for... include seizure medications. So we would have been able to see those and none were detected." Korslund: "And none were detected, and you would [ve] been able to find those?" Luckie: "Yes." (Id. p. 1-2) *7*

Neither Korslund nor co-counsel Kelly ("Vasta/Dicorradò") held Hughes or Luckie for questioning about conflicting testimony.

At the hospital, DR. Kendall ("Jones"), and other doctors, checked H.W.'s airway, breathing, and circulation; suctioned bile from her throat, and intubated. Bilateral breathing to lungs was achieved, but ultrasound revealed no cardiac activity. Jones, and other doctors reports say **intubate.** (Pet. Ex. 8). **Norfolk EMT's should've intubated H.W.** Had they, **she would be alive today.** H.W. **rode without oxygen and blood flow to her brain, causing Acute Hypoxic Ischemic Changes.** (Pet. Ex. 20, Univ. of Va. Pathologist, Maria ("Lopes")).

Love and Lineberry told police maintenance was at home multiple times. Lineberry said he had to shield himself from hot water. (Pet. Ex. 9, p. 1-2). Detective Steven ("Sweder") executed search warrant April 24th. He got (2) **temperatures (130°F & 134°F).**

He did'nt recall if water was tested at max. **Police did'nt investigate further into an**

4 Hughes was asked about medication: "It's an **antiseizure med**, ... also an anesthesia for when we do intubations;" (Id. p. 2); **proving EMT's can intubate.**

5 www.pdr.net/drug-summary/Midazolam-Hydrochloride. causes drowsiness; causes death; used for death row. Va. Dept. Corr. v. Jordan, 921F.3d 180 (4th Cir. 2019); Morva v. Commonwealth, 278 Va. 329 (2009).

6 (TX1-iliac blood); (TX2-heart blood); (TX3-urine); (TX4-bile); (TX5-liver); (TX6-gastric contents).

unsafe water heater, that caused a child's burns.

DR. Elizabeth ("Kinnison"), Pathologist, performed H.W.'s autopsy. Kinnison said no burns were present on front of H.W.'s body. *8* She found bruises she believed were blunt force trauma; and opined a bruise on H.W.'s head was unlikely to be one blow. (R.1406-11). She found a abdominal injury near bruise seen in video(s) April 3, 2018. *9* Kinnison's cause of death was "Complications of Scalding"-a gray area.

GMG Property Manager, Vickie ("Hudson's") testimony conflicts with Nicholson's. Her testimony involves Petitioner's complaints while living at Sandy Beach (September 1, 2016-April 24, 2018). (Pet. Ex. 11). Hudson was unaware of what was going on in an apartment she managed, where a child was burned; and Va. Nat. Gas and Norfolk "RED TAGGED a water heater. Her testimony excerpts are reproduced in the margins. **

**[Dicorrado]: "Did you receive a call... from [him] in regards to... gas company?... that same day he told you... [Va. Nat. Gas] is coming out."

"A. He [spoke] to maintenance girl... I do ['nt] know... if he called back." (Pet. Ex. 11. A, p. 219).

"Q. [I]f Sandy Beach receives anything, do they send it to you...?"

"A. They would send it back 'completed.'

"Q. Do you have any records... the... heater... was replaced?"

"A. No, I do ['nt]."

"Q. Were you present in Apartment 18 at any point... [4/24/18]?"

"A. No, I was ['nt]." (Id. p. 221).

"Q. [Your] not able... to testify as to all... work... completed on Apartment 18?"

"A. No I was 'nt present...."

"Q. I'm asking as... property manager, you do 'nt know all of... work... done...?"

"A. Yes. I can go by my records... [for] work... done..."

"Q. [A]re you saying you do 'nt have any record this... heater was replaced...?"

"A. To my knowledge, I have nothing..."

[Judge Doyle]: "Would you know if a part was replaced?"

"A. No. I would 'nt know...." (Id. p. 222-23).

[Dicorrado]: "[B]ack to [4/24/18]... you notify tenants if... owner want[s] to go in. At that time... there was police tape and detectives in and out...."

"A. I could 'nt give you the date... I know... the situation..."

"Q. [T]he owner could ['ve] gone in []... 'and you would 'nt have... to let him in because... no tenant...?"

"A. Yes and no.... We still do 'nt enter... we try to notify somebody if we are... to enter.... To my knowledge... owner or maintenance never entered. It was only myself."

"Q. But you were ['nt] there on... 24th. So you do 'nt have... knowledge of who was going in and out?"

"A. Right, no." (Id. p. 225).

"Q. Are you aware... [2/9/18]... water unit... was red-tagged...?" (Id. p. 228).

"A. Not at this moment... I ['d] have to go... through my records...."

[Hudson reads "RED TAG"]:"[Y]ou... testified... you would need... records to refresh... recollection... whether you had knowledge... [if]... red tagged?"

"A. No." (Id. p. 230)

[Commonwealth]: "[A] pilot... that does 'nt stay on... is that... same type of complaint as... water being excessively hot?" (Id. p. 231).

"A. If there 's no heat, there ['s]... no hot water."

"Q. Would there be heat if... pilot... was out?"

"A. No." (Id. p. 232).

7 Luckie performed barbiturate testing on (TX1).

8 H.W.'s burns were **instantaneous, as she was 'nt in alot of water to receive such burns.**

9 None of H.W.'s bruises are attributed to Petitioner. It's unknown how she fell in the bath; what happened in ambulance; or what happen at the hospital.

[Dicorrado]: "[Y]ou...testified...HVAC system,...heater system, is connected to ...hot water system....

"A. Yes.

"Q. [3/15/18]...maintenance went out...made sure...heat is working...Reported...[T-]stat needs to be replaced, reading 75 instead of 70?

"A. Okay.

"Q. [T-]stat...to...heater for...HVAC...if that ['s] faulty, it's possible...hot water was faulty as well?

If there ['s] a problem with...heater...there's a problem with...hot water?

"A. I ca 'nt answer that question.

"Q. [B]ut you just did say that. If there's no heat, there's no hot water, right?

"A. Uh-huh.

"Q. Is that a 'yes'?

"A. Yes." (Id. p. 232-33).

It's necessary to read Nicholson's lies in full. Nicholson's testimony was allowed without objection from attorneys. Petitioner was blind-sided, as Commonwealth never informed him of intentions to call owner of property where he lived. His testimony was a **bias conflict of interest** as seen in Va. Rules of Evidence 2:607 (a) (v); as he had a **financial interest to testify in bad faith, to avoid civil liability for H.W.'s burns on his property.**

Nicholson claimed all work was done under his "direct supervision", **but had no recollection of parts replaced in Petitioner's home.** He swore under oath nothing on the heater was replaced. How could Nicholson **not recall "RED TAG" sent to him by Va. Nat. Gas, in a home where a child was burned.** Because Nicholson is a **SLUMLORD** in every sense of the meaning. In the first month Petitioner moved to Sandy Beach, appliances were an issue.

A myriad of issues like:

water heater fluctuating temperatures; pilot light not staying lit; hot water and heat going out; thermostat breaking; breaker box faulty; washing machine not working; leaks in roof, moldy ceiling; stove and oven break from power surge, destroying flat screen TV; water dripping in HVAC ducts. (Pet. Ex. 11, p. 1-3).

Alot in a short time. Nicholson lied under oath that Hudson, Tray, and police tested "absolutely everything. **There were no additional investigations or testing.** Do 'nt let Nicholson get **away with negligence for unlawful temperatures.** His testimony excerpts are reproduced in the margins. **

**[Commonwealth]: "Do you...supervise...repairs to those properties?" (Pet. Ex. 11, B, p. 234).

"A. ll...maintenance...goes through me.

"Q. [R]egarding the...heater what...complaints were addressed by your company?

"A. [I]t was 'nt my company...my maintenance guy.

"Q. Under your direction?

"A. Yes, under my **direct supervision.**" (Id. p. 236).

"Q. Do you know [1st] hand if the controller... was replaced at any point?

"A. Only through...paperwork...Somebody told me... I do 'nt personally recall it being replaced....

"Q. I note in [Comm. Ex. 29]...it ['s] set on 'C'.

"A. Right." (Id. p. 241).

"Q. [I]t has hot...A, B, C, ...very hot...any significance to that setting?

"A. Which one?

"Q. Set on 'C', is that unusaul or -

"A. Not really...[it 's] controllable by whoever is in the apartment. We normally set them to...

lowest setting or we ask, but any of those -like in my house, I have mine set at 120. ...I do 'nt know what...temperatures are if you want...heater to blow hotter... want...water...hotter...turn that up..

"Q. After [4/24/18], do you know whether...heater was replaced...?" (Id. p. 242).

"A. It has 'nt been.

"Q. [S]omeone told you... the controller... was replaced?

"A. Right.

"Q. Do you know... before or after?

"A. No, I do 'nt know. I was told....

"Q. After... incident, did you... or maintenance... do repairs to this... heater?

"A. Weve never done anything... Never had another call about it." (Id. p. 243).

[Shown [Comm. Ex. 65] (Pet. Ex. 2): I see... 'maximum water temperature 180 degrees'

"A. That 's... max... run through... system without... hurt[ing system.

"Q. That... heater was ['nt]... near that; ... correct?

[Korslund]: "Objection. Leading.

[Commonwealth]: "What was... maximum... heater was set on?"

".... (Id. p. 246). They come with... overflow device on it [and] blows when... hits, I think 165....

[Korslund]: "We've got to be... clear... Are you saying... this... heater is in... apartment as we speak...?"

"A. I believe that 's true, yes.

"Q. How do you know...?"

"A. I've never gotten a work order to replace it.

"Q. [I]s it your sworn testimony... you have no knowledge... people... fixed this or replaced it...?"

"A. To my knowledge, yes.

"Q. [D]id you test... mak[ing] sure it worked... properly?"

"A. No.

"Q. So after - and your the owner?

"A. *10* They read... temperature coming out at 130... they asked... was that normal... I'm like 'Yes... people cut it up to 140, 145. ' I see it cut all over the place. In my home its 120.... I've never stuck a thermometer under it." (Id. p. 250)

"Q. You or anybody under... you... did nothing to test... water to see if... working properly -

"A. At... time that all -

"-after the child passed away?

"A. -of this happened, I do 'nt recall what we immediately did... Vickie...."

Tray... police... everybody else were all in... apartment testing absolutely everything *10.1* I do 'nt remember my exact conversations... I know ...everything was functioning fine before... next tenant moved in." (Id. p. 251).

"Q. [Y]ou do 'nt know... what was going on with every apartment in terms of maintenance."

"A. Yes I do. I get every... maintenance ticket that comes through." (Id. p. 252). *10.2*

"Q. Are you aware of any efforts... made to recall this.

"A. I ['ve] not been informed of any recall issues..."

"Q. If a letter was sent to Sandy Beach... You ['d] receive that?

"A. My registered agent would... " (Id. p. 253).

"Q [A]re you aware... Norfolk said... the [r]... turn [ing] off the gas if you do 'nt fix the problem? Did you receive any correspondence such as that?"

"A. No.

"Q. Are you aware... they red-flagged a particular apartment?

"A. We've received red flags before... that 's a big deal. So any time officials... go [] into a house with... smell of gas or a pilot not staying lit.... They red tag... they do 'nt want... liability in our litigious society... we go out... we check the appliance.... You can never get... person who put red tag on to take it off.... you... certify... it 's working... take... red tag off." (Id. p. 254-55).

"Q. [D]id you receive one [on Apartment 18] indicating that on [4/24/18]?"

"A. Not that I'm aware of.

[Doyle]: [Y]ou say 'this particular apartment' what do you mean?

[Korslund]: Apartment 18." (Ibid.)

[Nicholson]: I'm not aware of one.

"Q. [I]f I show [] you... letter sent to you, would you be able to answer..."

"A. Yes.... Okay. It says it would 'nt light.

"Q. You received that letter?

"A. I do 'nt recall the letter at all, but it says -

"Q. Was it sent to your... LLC?

"A. It 's addressed to Sandy Beach... correct.

"Q. [T]he water... being stored in the tank.... hoe hot can that water get...?"

"A [B]efore it blows out the side, I have no idea.... I have no earthly idea what the actual temperature would be." (Id. p. 264)

10 Goes into explanation unprompted, trying to make water heater **deminimus**.

10.1 Perjury testimony. Hudson testified was 'nt in apartment April 24th. Police **did 'nt do any other testing**.

*10.2 Contradiction. Had no knowledge controller and gas valve was replaced.

"Q. [I]f clicked all the way to...very hot, is it possible...**maximum temperature water can come out...tank?**

"A. Well, yeah, but what are you calling 'maximum temperature water'?"

"Q. I do 'nt know. That 's what I 'm trying to ask you.

"A. I have no idea what very hot is either, but 'C' they said...was 130 when they measured it, because I did 'nt know...I do 'nt know what 'A' is. I honestly do 'nt." (Id. p. 265).

"Q. [Your] not disputing or challenging...a child was...burned using this system?"

"A. No

"Q. With the water temperatures?

"A. I do ['nt] personally believe...that water tank could ever get hot enough to burn someone to death." (Id. p. 266).

"Q. But you believe it took place?

"A. I do ['nt] believe that...heater got hot enough to do that.

"Q. [A]re you suggesting somebody would have to boil water on a stove and then pour -

"A. Sir I have absolutely no...idea what happened in there...." (Id. p. 267).

"Q. [L]ooking at [Comm. Ex 29 & 32], if you...turn that knob...to max, are you...putting out...hottest water?

"A. [T]hat 's a mixing valve...mixing valves have scald guards. So it 's impossible...to get above scald temperatures. *10.3* I do 'nt know what the scald temperature is...." (Id. p. 270).

[Korslund grabs Ron ("George") Report]: Are you familiar with FVIR technology?

"A. No sir....

"Q. [Y]our testimony is you have no idea what **flammable vapor ignition is?**

"A. Not that terminology...." (Id. p. 271).

"Q. Can hot water change from...**indication of pressure balance?**

"A. I have no idea what you mean by that." (ID. p. 272)

Love 's testimony was coached for Commonwealth, for payment of a lesser sentence. No person in America enters a plea agreement, without **getting sentenced for (3) years. *11*** Except for one reason: **Love had work to do.** Co-defendants **testimony must be approached with caution for propensity to blame the the other.**

Analyzing Love 's moral turpitude, being a compulsive liar, and false testimony, see (Pet. Ex. 3, 4, 5 & 10). **Love even faked crying when told H.W. passed.** (Pet. Ex. 10, p. 4). Commonwealth was aware of Love 's **false testimony, but chose not to correct the record.** (See (Pet. Ex. 10, p. 9-13) plot to swoon/seduce Lineberry; manipulating him, in attempt to get him to change story to police). **Love 's testimony violated Va. Rules of Evidence 2:607(a)(i) and (a)(vi).**

Amber ("Shipman"), intern, Eastern Va. Medical School, in child abuse pediatrics, **erroneously testified** at Petitioner 's preliminary hearing and trial. Shipman **defaults to "inflicted trauma"**, when accidental history is 'nt provided. Her conclusions were opinions, not

10.3 Acknowledging mixing valves, to distract court from seeing mixing valves were 'nt used, or it would be impossible to reach 134°F.

11 Love enters 20-year-cap-plea (October 28, 2020), 2 yrs., 8 mos. later, (June 23, 2023), is sentenced to 15 yrs - (28) days after Petitioner is sentenced to (35) yrs.

facts. Shipman never found a "plausible accidental history" because she never asked

about one. Her testimony is reproduced in the margins.**

[Commonwealth]: [W]hat['s] changed recently?

[Shipman]: I became certified in child abuse pediatrics.... I sat for my board... March... 2022.

"Q. In... autopsy, did you take note of... injuries... to [H.W.]?"

"A. I did... I observed bruises... burn injuries... injuries on top of her head... and hematoma in mesenteric tissue..." (Pet. Ex. 12, p. 333).

[Shown [Comm. Ex. 44]]: Do you note anything... regard[ing]... abdom[en] area...?

"A. In this photo[] of [H.W.], there are no abnormalities on her abdomen.

"Q. [L]ooking inside... [H.W.], what was found?

"A. [E]vidence of a mesenteric hematoma. The mesentery is tissue... in our abdomen... hold[s] our intestines... in place..." (Id. p. 334).

"Q [W]hat['s] the significance...?"

"A. Mesenteric hematoma is a result of blunt force trauma.... requir[ing] a high amount of force.... It['s] atypical to see in... active child without a history of... abdominal injury.

"Q. Did you note... other bruising...?"

"A. [H.W.]... had [4] bruises on... scalp... [4] bruises on... chest...." (Id. p. 335).

[Shown [Comm. Ex. 49]]: What['s] that a picture of?

"A. [I]njuries... found on... back of her head. She had... curling areas... red and purple.... When injuries... start[] to heal, it changes what they look like.... Im not entirely certain... those are abrasions or healing burns..." (Id. p. 337). *12*

[Shown [Comm. Ex. 50]]: [W]hat['s]... significance of... burns, the patterns...?"

"A.... Her burns are... demarcated.... without much variation on the edges, without... evidence of a splash injury.... Children... burn[ed] accidentally in a bath... would try to get away.... [Her] burns are uniform... suggesting... immobile when... burned" (Id. p. 339-41).

[Shown [Comm. Ex. 44]]: [B]urns are not on her chest or stomach...

"A. [C]orrect.... or... vaginal area.

"Q. [W]hat['s] the significance...?"

"A. If [H.W.] had been seated... I['d] expect burns to involve... front of her body..

"Q. Did you find... running water patterns on her body...?" (Id. p. 341-42).

"A. I did['nt]... [H.W.] did['nt] have any burn pattern... that she was under flowing water." (Id.)

"I found no plausible accidental explanation for... burns... this is diagnostic of abusive trauma.... If [H.W.]... sought medical care, there['s] a high chance she... survive[s]... with minimal complications... absense of any plausible explanation, this is... medical eglect." (Id. p. 346).

[Shipman discussing video(s) from 4/3/18]: In the video, there['s]... discoloration on her right... abdomen.... There['s] no.... history... for that bruise, ... absense of a plausible accidental explanation, the bruise... is consistant with inflicted trauma." (Id. p. 348-49).

"Q. What['s] your conclusion regarding her injuries in a bathtub?

"A. [H.W.'s] injuries are['nt] consistant with a child left in a bathtub." (Ibid.)

[Dicorrado]: If she was 'nt moving... would 'nt she have burns consistantly everywhere?

"A. [D]epending on how... positioned...." (Id. p. 351).

"Q. [C]ould 'nt it be possible... she fell backwards?

"A. [I 'd] expect... irregularity in... edges of the burn from where... water came up and back down, ... I['d] expect[]... splash patterns...." (Id. p. 352).

"Q. [Y]ou do 'nt know... degree... bath was filled correct?

"A. I do['nt]. If filled with any variable amount... I['d]... expect... burn pattern as she fell.

"Q. [S]omebody could have a delay in realizing how hot it was... That 's possible, right?

"A. It['s]... atypical not to remove yourself from a burning stimulus." (Id. p. 354).

"Q. [T]hat was 'nt my question... is it possible, not... atypical... or plausible...?"

"A. It 's rare... I... say anything is 100[%]... it would be unlikely.

"Q. [I f]... a toddler... trying to climb out... f[ell] backwards, that 's a possible explanation?

"A. I['d]... expect[]... more... burns on her legs... and... splash injury....

"Q. [I]f she fell and you were 'nt there... we do 'nt know... how her body... portray[ed] itself; is that accurate?

12 Unable to tell difference between burns and bruises; defaults to bruises automatically.

"A. I could 'nt speak how she landed... I ['d] expect [] water to move around her body, causing variable burns..." (Id. p. 356).

"Q. Did you do... research... to... normal bath temperature [s]... for a child?

"A. It 's recommended... water heater [s] be kept at 120 [°F] to avoid burns at higher temperatures... So typically... 90's and 100's..." (Id. p. 360).

"Q. [S]calding burns [like] these... toddlers are more at risk... because... how explosive they are?

"A. I do 'nt think I ['d] say... most at risk... scald injuries are... more common... in young children..." (Id. p. 361-62).

"Q. [Y]ou do 'nt know... exact temperatures at... time... burns occurred...?

"A. [C]orrect.

"Q. [I]t could ['ve] been hotter than 134 [°F]?"

"A. It could ['ve].

"Q. You write 'without a plausible accidental... injury'... Can you explain...?"

"A. If... provided a history that ['s] consistent... but nobody... provided me such history... explain [ing] it.

"Q [D]o you interview... parents... doing your assessments?" (Id. p. 363-64).

"A. I have.

"Q. That did ['nt] occur in this case?

"A. I was ['nt] given... opportunity to interview them.

"Q. You did ['nt] have... opportunity, or... you did ['nt] ask?

"A. I did ['nt] ask. It has 'nt been asked that I - I typically interview parents when they are present..." (Ibid.)

"Q. [W]hen you do 'nt have... additional history, ... you have just... information... Commonwealth... provided...?"

"A. [C]orrect.

[Discussing head and chest bruises]: You are not able to date when these occurred...?"

"A. I ['m] not.

"Q. [Y]our [] not able to advise on how these occurred?

"A. [T]heir blunt force trauma.

"Q. [Y]ou do 'nt know how the blunt force trauma occurred?

"A. I know there was some type of impact. I could 'nt say specifically what." (Id. p. 369-370).

13 Petitioner's mom, Lauren ("Coulbourn") was sequestered, and never called on this material fact, as Love, H.W., Petitioner, T.H. and other family members witnessed H.W. injure herself.

Shipman never interviewed Love or Pet-

itioner. So how could she determine what was or

was 'nt consistant, without all the information,

when doing her assessments. One would believe the

reason she never spoke with them, is because she

was unqualified to do so. She would have been

provided a history of H.W. :

(1) climbing/falling on rocks in Ocean View; (2) throwing herself to the ground in tantrums (regardless the surface); (3) climbing/falling out of highchair; (4) jumping off couch and hitting abdomen on end-table at Petitioner's mom's house. *13*

All highly relevant injury history,

that neither Shipman nor the Commonwealth,

ever wanted to find.

COMMONWEALTH RESTS

Commonwealth rested, and Korslund mot-

ioned to strike §18.2-51.2 and §18.2-32 -conc-

eding §18.2-371.1, (Pet. Ex. 12.A, p. 381). *14*

Korslund:

Shipman's testimony is... only testimony [he] intentionally got water hot... Common sense... dictates... this was an accident... He was tasked with giving [H.W.] a bath, and... may have been neglectful... I do 'nt think there's any evidence... he had... ill will or malice... to hurt [H.W.]." (Id. p. 381).

Doyle: [W]hat 's your scenario... it 's

accidental?" (Id. p. 383).

Korslund: "He 's not in the bathroom..." (Ibid.)

Doyle: "So your scenario is she 's...

laying still in scalding hot water... up to

a minute?" (Id. p. 384).

14 Petitioner did 'nt want to concede charges, as a result, Korslund prejudiced Petitioner on appeal.

Korslund:

"The Court can['t] ignore 134[°F]....a child is in the bathtub...water running...water is scalding hot...she attempts to turn it off....ends up making it worse and tries to -"

Doyle interrupts:

"And lays back down...in...hot water...almost a minute....I want to hear how that...does 'nt rule out accidental. It was her opinion it was['nt] accidental."(Id.p.384-85).

Korslund:

I did'nt take her testimony as ruling out accidental....She's...saying...it could be accidental...but most likely it's not....(Ibid.)

Doyle:

"I do'nt think there's evidence connecting...bruising to...scalding. I do'nt think...it happened...at one time. There's no evidence...from experts or otherwise...I suppose it coming in...show[ing]...experiences [H.W.] had....It's there. They testified to it...it['s] not flowing water, not moving, [H.W. 's] laying in...water for...a minute being scalded it's - explain how that could be otherwise than...being forced to be that way?" (Id.p.385-86).

Korslund:

"I do'nt think there's enough evidence for a trier of fact...granting...inferences...this was done...same time of...scalding....they ca'nt say when...bruises were done,...ca'nt tell you how...bruises were done.... You have a child [2 yrs.],[7 mos.] old....trying to get out of the...tub. She ca'nt...simply walk out. She's slipping...falling...hitting her head on...tub....falling back into...water....I think there's not sufficient evidence for malice...**what if this was a civil case,...we're talking about a...manufacturer defect or...liability of the complex....**"(Id.p.386-87).

Both of the motions to strike were denied.(Id.p.390,397).Korslund was asked if he'd like to renew motions to strike,and he said,"I would but...**we have no evidence.**" Commonwealth said H.W. died from Petitioner's "actions and inactions." They asked that he be found guilty of §18.2-32 ,as "he intentionally scalded [H.W.] while...immobile or unconscious,according to Shipman,in a full bath of water."(Id.p.400).*14.1* They asked to find him guilty of §18.2-371.1,§18.2-51.2,and in the alternative,§18.2-33 .(Id.p.401-04).

Korslund then argued that the Commonwealth did'nt "meet...burden of proving beyond a reasonable doubt...**all elements of...offense,...including...mens rea...necessary for...[§18.2-32] and [§18.2-51.2].**...."Korslund then argued that Love was in driver seat once home,and could have gone to hospital or called 911,but chose not to.(Id.p.405-06).

14.1 Evidence proves that H.W. was never in a full bath of water.

TRIAL COURT'S DECISION

Doyle said Love and Lineberry's testimony about Love going to a shelter showed, "volatility and turmoil in...household."(APPENDIX B,p.417).***14.2*** He focused on the excited utterance ("going to prison"), "[r]ather than saying she fell in...scalding water[;][h]e did'nt say...[H.W.] accidentally turned...hot water on."(Id.p.418-19).***14.3*** He discussed Love's **lies that Petitioner threatened her - not allowing H.W. to go to hospital.**(Ibid.)

Doyle:

"[T]he Court is going to convict...of [§18.2-51] simply because of the way it went....I'm going to convict...for...act of causing intentionally...with malice a cruel act,causing [H.W.] to lay in scalding hot water for a sufficient period of time...."(Id.p.426).

Doyle dismissed §18.2-32,convicting him of §18.2-33 in commission of §18.2-371.1; ruling H.W.'s death "was result of...[§18.2-371.1]...fail[ing] to call...medical assistance."(Id.p.427). Dicorrado and Korslund were removed for **failing to call known witnesses and evidence at trial.*14.4*** Kristin ("Paulding") was appointed for sentencing and appeal,and filed a Motion to Set Aside Verdict,arguing **overwhelming evidence** Love and Petitioner **provided medical care for H.W.;**and their **actions were'nt done with bad purpose.**That Motion was denied (R.978-80),and Petitioner was sentenced to 35 years

COURT OF APPEALS AND SUPREME COURT OF VIRGINIA ERRED IN AFFIRMING TRIAL COURT'S DECISION TO ALLOW PAST BAD ACTS AGAINST H.W. ON APRIL 3,2018, BECAUSE PROBATIVE VALUE OF EVIDENCE WAS OUTWEIGHED BY DANGER OF UNFAIR PREJUDICE, AND ERROR WAS'NT HARMLESS, AS EVIDENCE WAS ERRONEOUSLY PRESENTED AND ADMITTED. (R.526-28,541, 1175-77).

STANDARD OF REVIEW

Abuse of discretion is when a trier of fact overlooks "a relevant factor that shoul['ve] been given significant weight." Landrum v. Chippenham & Johnson-Willis Hosp., Inc., 282 Va. 346,352 (2011)(citing Kern v. TXO Prod. Corp., 738 F.2d 968, 970 (8th Cir. 1984).

14.2 (Pet.Ex.10,p.9-13) Love and Lineberry's plot.

14.3 Excited utterance was'nt admission of guilt to intentional act.It was taken out of context.

14.4 Attorney General noted Petitioner **did'nt "present any evidence during trial.** (R.1718-20)."(Comm.Br.,p.16).

"A circuit courts decision regarding...admissability of evidence are reviewed for abuse of discretion." Jones v. Commonwealth, 71 Va.App.70,85 (2019); Jackson v. Jackson, 69 Va.App.243,247 (2018); aff'd, 298 Va. 132 (2019); Campos v. Commonwealth, 69 Va.App.690,702 (2017). "The abuse of discretion standard 'includes review to determine that the decision was['nt] guided by erroneous legal conclusions.'" Carter v. Commonwealth, 293 Va. 537,543-44 (2017)(quoting Porter v. Commonwealth, 276 Va. 203,260 (2008)). "A reviewing court can conclude...abuse of discretion occurred only when a [trier of fact] could['nt] differ about...correct result." Commonwealth v. Swann, 290 Va. 194,197 (2015).

ARGUMENT

Va. Rules of Evidence 2:404(b) states :

"Evidence of other crimes, wrongs or acts is **generally not admissible** to prove...character...of a person...to show...person acted in conformity herewith....If...legitimate probative value...outweighs...incidental prejudice,...evidence is admissible if [tending] to prove...relevant fact ...to...offense charged, [like]...motive, opportunity, intent,...accident, [etc.]."

Commonwealth presented Motion **in limine** for past bad acts for bruises seen on H.W., April 3, 2018, **to prove mens rea**, for burns **(20) days later, April 23, 2018.** Judge Junius P. ("Fulton") permitted them to offer this **false evidence** at trial. After conviction, Va. Court of Appeals ruled H.W.'s injuries April 3rd were relevant to show malice and intent to harm H.W. April 23rd. (Ct. of App. Op., p.17).

To introduce prior crimes, wrongs or acts, you must **first show** "evidence is relevant...[and] pertinent to matters in issue." Clay v. Commonwealth, 262 Va. 253,257 (2001). **However, even if evidence is relevant, it will still be excluded if violating Va. Rules of Evidence 2:403;** which states, "relevant evidence may be **excluded** if...probative value...**is substantially outweighed by...danger of unfair prejudice.**" Gamache v. Allen, 268 Va. 222,227 (2004).

Determining prejudicial evidence, courts ask if it "arouse[s]...hostility or sympathy for one side without regard[ing] probative value...[if] tend[ing to confuse or mislead...trier of fact or distract...to irrelevant considerations." Clay, at 107-08. April 3rd's evidence would arouse hostility towards Petitioner for text messages arguing with Love, and a misleading screenshot from **video(s)** of H.W. with red eye, bruises on legs, arms, and abdomen.

Evidence presented at Motion **in limine** and trial, were **erroneously admitted**, and here is why :

Va. Code §19.2-324.1, ERRONEOUSLY ADMITTED EVIDENCE states :

"In appeals... ,whe a challenge to convictions rests on a claim...evidence was insufficient because trial court improperly admitted evidence,... reviewing court[s] consider all evidence admitted at trial to determine... sufficient evidence to sustain...conviction.If...court determines... evidence was erroneously admitted...such error was not harmless, the case shall be remanded for a new trial...."

(i) Screenshot showing redness to H.W.'s eye was **fabricated by Commonwealth, and intentionally presented as false evidence**. In their file, are (2) videos*15* not one. They have both video(s) because Love opened her phone to them. Petitioner would play them for the Court, but Commonwealth does 'nt want that, as it would prove far too much against them. Commonwealth knew Petitioner was denied bond, and could 'nt prove screenshot was (2) videos. Commonwealth chose to **fabricate the narrative, doctoring video(s) intentionally to mislead Fulton and Doyle**. Va. Court of Appeals took the bait in their Opinion.*16* It's because of the **intentional sabotage of the record by the Commonwealth**. Court of Appeals, Fulton, and Doyle **never saw (2) videos**.

April 3rd's video(s) showed T.H. and H.W. near Petitioner, neither showing fear or distress towards him; disproving their theory he was home alone all day abusing H.W. Had this happened, T.H. would've been distressed seeing his dad abuse H.W. Had the video(s) been damaging to Petitioner, Commonwealth would have been racing to play them for the Court.

If what Petitioner is saying were not true, the (2) videos would 'nt be embedded in Love's texts as (Comm.Ex.57). *17* If Commonwealth says "Petitioner is lying", hold an evidentiary hearing for Love and his cellphones.

(ii) Allowing Commonwealth to **prejudicially introduce** screenshot of unplayed video(s), to bolster Kinnison and Shipman's findings about H.W.'s abdomen, **confused Doyle at trial, leading him to say:**

"I do 'nt think I can state where that abdominal injury was suffered, but it would be consistant with how ever he was keeping her in the water."
(APPENDIX B, p.422).

15 One video, H.W.'s on toilet, pointing at legs, saying "Mama Hit", uncoached, and without redness to eye. April 3rd video, H.W. is standing by couch, near Petitioner's 8½ year old son, T.H..

16 "[A]t...in limine...[Petitioner's] statement about...timing of...video shift[s] from ...'other day' to 'earlier today'...."(Ct.of App.Op., p.13). "[His] texts...leading up to ...video contained an inconsistency."(Id.p.15).

17 "[I]t does ['nt] appear...video of...injuries...referenced...in limine...was admitted into evidence...still frame photo[s] were entered as [Comm.Ex.57]. The video is apparently embedded within text messages." (Comm.Br., p.25, footnote 8).

April 3rd's video(s) were used to influence this erroneous remark. Not a scintilla of evidence was presented that H.W.'s injuries were Petitioner's doing, or that she was in his sole care. Linking April 3rd's evidence to H.W.'s burns/death was 'nt harmless error. As Court of Appeals noted, H.W. was going to Angel's Place Daycare April 16, 2018. None of H.W.'s care takers ever mentioned "RED FLAGS" for abuse while changing clothes and diapers. Also, Kinnison's autopsy said H.W.'s death was "Complications of Scalding". It never said blunt force trauma was proximate cause of death.

Va. Supreme Court in Smarr v. Commonwealth, 219 Va. 168 (1978), ruled introduction of past bad acts was **reversible error** for mom charged with §18.2-51 of 3-yr.-old-son. Trial Court **erred**, allowing Commonwealth witness to testify, when "[10 mos.] old 'he hit his head...walking and sustained...laceration, which was sutured'...when [15 mos.] old 'he...fell and cut his head...a [15] millimeter superficial laceration." Id. at 169.

Va. Supreme Court ruled:

"Commonwealth's evidence failed to demonstrate...defendant's **conduct caused or contributed to...prior injuries or...only...defendant had access to...child at...time of...events....**prosecution merely showed...**injuries occurred and nothing more....**the...fact that...child had been **injured previously had no probative value...of...intent at...time of...alleged act, and was inadmissible.**" Id. at 270.

(iii) Any bruise seen in video(s) April 3rd, means they occurred prior to April 3rd. Therefore, Petitioner is 'nt linked to H.W.'s abdomen injury. Furthermore, Love never spoke about that bruise in texts April 3rd nor prior, nor to police, nor in testimony. Because Love and Petitioner knew it occurred at Coulbourne's home.

(iv) "Non-constitutional error is harmless if other evidence of guilt is so overwhelming...error so insignificant...error failed to have any substantial evidence on...verdict." Lienau v. Commonwealth, 69 Va.App. 254, 270 (2018). April 3rd's evidence **error is 'nt insignificant**; painting Petitioner as child abuser before H.W.'s death-**automatically tainting evidence (20) later.** Instead of seeing him apply medications and telling Love to take H.W. to hospital, he's seen avoiding/delaying care.

(v) Shipman's report/testimony was **plain error**, like in Smarr. Expert opinions **not based on facts, are not allowed at trial.** In Towns v. Commonwealth, 1999 Va.App. LEXIS 196 (Ct. of App. 1999), an expert was 'nt allowed to give opinion on 4-mos.-old's injury

being intentionally inflicted. New trials are necessary when evidentiary errors arise, like Petitioner's case, and Gilliam v. Commonwealth, 2014 Va.App. LEXIS 231 (2014); which was reversed and remanded for new trial. Gilliam's charges were affected by trial error, allowing hearsay testimony about costs of repairing burglarized property. Admission was 'nt harmless. Shipman's opinion testimony, reports, and Commonwealth's intentional misconduct of doctoring evidence, is reversible error, fruit of the poisonous tree, and violation of Due Process.

U.S. Supreme Court said in Miller v. Pate, 386 U.S. 1 (1967):

"The [14th] Amendment can not tolerate a...criminal conviction obtained by the knowing use of false evidence. Mooney v. Holohan, 294 U.S. 103 [1935]. There has been no deviation from that established principle. Napue v. Illinois, 360 U.S. 264 [1959]; Pyle v. Kansas, 317 U.S. 213 [1942]; cf. Alcorta v. Texas, 355 U.S. 28 [1957]. There can be no departure from that principle here." (Id. at 7).

(vi) Court of Appeals erred riling probative value of April 3rd's evidence outweighed danger of unfair prejudice. They erred, stating loosely, "in the alternative, ... even if...trial court erred in granting...in limine...error would['ve] been harmless in this case." (Ct. of App. Op., p.16). Please see Commonwealth's manipulation, fabrication, and intentional misconduct, for what it is: Reversible Error.

II COURT OF APPEALS AND SUPREME COURT OF VIRGINIA ERRED IN AFFIRMING TRIAL COURT'S DECISION PETITIONER WAS GUILTY OF MALICIOUS WOUNDING BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF MALICE. (R.1702-10,1720,1725-37).

STANDARD OF REVIEW

When challenging sufficiency of evidence on appeal, the court reviews "evidence in...light most favorable to...Commonwealth." Ward v. Commonwealth, 264 Va. 648, 654 (2002). Convictions wo'nt be reversed "unless plainly wrong or without evidence to support it." Wright v. Commonwealth, 39 Va.App. 698,703 (2003). "[T]he appellate court is...obligated to set aside...judgment when...contrary to...law and...judgment is plainly wrong." Tarpley v. Commonwealth, 261 Va. 251,256 (2001). The Fourteenth Amendment to the U.S. Constitution "protects...against conviction 'except upon proof beyond a reasonable doubt of every fact necessaary...which he is charged.'" Jackson v. Virginia, 443 U.S. 307,310 (1979)(quoting In re. Winship, 397 U.S. 358,364 (1970)). U.S. Supreme Court can hear Petitioner's sufficiency of evidence claims.

ARGUMENT

Va. Code §18.2-51 states :

"If any person maliciously shoot, cut, or wound any person or... cause bodily injury with... intent to maim, disfigure, disable, or kill...."

"Malice inheres in the doing of a wrongful act intentionally or without just cause or excuse or as a result of ill will." Tizon v. Commonwealth, 60 Va.App. 1, 11 (2012) (quoting Dawkins v. Commonwealth, 186 Va. 55, 61 (1947)). "[I]t may be... expressed or implied by conduct." Watson-Scott v. Commonwealth, 298 Va. 251, 256 (2019). "[I]t may be directly evidenced by words, or inferred from acts and conduct... result[ing] in injury." Robertson v. Commonwealth, 31 Va.App. 814, 823 (2000).

Commonwealth said Petitioner was responsible for §18.2-51.2, stating :

"But for his actions of putting [H.W.] in a scalding hot... water filled tub, [H.W.] would['nt] have died." (Pet. Ex. 12.A, p. 403). "[T]here's been **much ado about the... heater**, ... I would argue that['s] a red herring... everyone knew... temperatures fluctuated. The **control may have been replaced...**, but all complaints [are]... no hot water, not... excessive hot water, ... did 'nt have heat, ... so that['s]... a red herring." (Id. p. 403-04).

Korslund:

"The... water heater..., I have to address it. I do 'nt think... there's any other logical explanation how... water... get[s] that hot. You've heard... Nicholson, and I['d] **characterize him as a biased witness**. I think there's ... **bias**... where **he might want to be careful with his words**, but he's telling you there's no way a child could be burned in the bathtub.... That's impossible.... the only logical explanation is there['s] **something terribly wrong with the bath water, with the... heater**." (Id. p. 422).

Doyle:

"I accept... testimony of... Kinnison and Shipman... their testimony makes sense... especially Shipman... we have to conclude **circumstantially** of what ... caus[ed] [H.W.] to suffer these injuries. Shipman said... no splash injuries... [H.W.] was['nt] seated... in... water because... absence of burn[s]... on... chest, ... stomach, and vaginal area... [H.W.] was laying in water face up and immobile while being burned...." (APPENDIX B, p. 421). [Regarding 130°F & 134°F]: "I think... she said it was less than a minute, ... what I took from... [it]... approaching a minute. **It would 'nt occur in seconds**." (Id. p. 422).

Doyle concluded H.W.'s abdomen was consistent with being held down. H.W. turning water up and "lays down still in the bath makes absolutely no sense to me... I ca['nt] conceive how that could['ve] been.... It's preposterous... to have that scenario... **It could['nt] ... occur[] that way**." (Id. p. 423). Petitioner's evidence **disproves their theories**, proving **H.W. was burned instantly by water over 134°F**. Here's why:

(i) To find Petitioner guilty of §18.2-51, there **must be evidence he acted with malice, and every hypothesis of innocence must be disproved**. There's **no evidence** he was

in bathroom with H.W. Petitioner did 'nt have any burns on his hands/arms which would have been present if held down in 134°F water over a minute.

(ii) It's impossible for H.W.'s back and buttocks to be burned if laying face-up while held down; as both areas would've been suctioned/pressed against porcelain bottom. Water ca'nt burn areas it ca'nt reach. H.W. being in full tub of water is also impossible. H.W. ca'nt be in full tub of water, and also, not have burns in areas which she did not. (Chest, face, stomach, vaginal area). This theory is preposterous and illogical.

(iii) Ron ("George") Report Petitioner's trial attorney's, Brett ("Lucas"), and Jennifer ("Gebler"), contacted George about **water heater malfunctions**. (Pet. Ex. 22; 22.A; & 22.B). They were removed in 2019. Dicorrado and Korslund told Petitioner, Coulbourne, and brother, Ryan ("James"), George was subpoenaed, and would testify. **Shockingly**, George was 'nt subpoenaed by Korslund. George's Affidavit (Pet. Ex. 23.C, p. 9), proves he was going to testify, and ready. George has zero knowledge of speaking to Dicorrado and Korslund - only Lucas, Gebler, and Paulding. George's Report excerpts are produced in th margins. **

** "[T]ap water exceeded... maximum allowable temperature permitted by... V[a.] Construction Code... and scalded [H.W.]" (Pet. Ex. 23, p. 4). "[R]oomates statement to police... temperature[s] would suddenly change... indicate[s]... pressure-balancing piston... stuck." (Id. p. 6).

"This... heater incorporates 'FVIR technology' - 'flammable vapor ignition resistant.' Bradford White Corporation discontinued... this product... [6/21/15]. FVIR... [is] implicated as a source in pilot... and burner issues...." (Id. p. 8).

"[D]ocuments provided do 'nt show... permit... taken out for... installation of... heater... failing to seek a permit for installation and inspection... resulted in no inspection... performed by... plumbing inspector for compliance...."

"[M]anufacturers recommend... heater[s] be placed in a safe location... inaccessible to... public... includ[ing] tenants as tenants are not responsible for... 'good and safe working order' of... plumbing system...; that responsibility falls upon... owner. V[a.] Residential Landlord & Tenant Act, Landlord Obligations §55-248-13. (Id. p. 9-10).

"[2/9/18] Norfolk sent a letter to Sandy Beach...: 'Notice to Correct [Va. Nat. Gas]

Red Tag Condition... failed control on water heater...." (Id. p. 11). "Sandy Beach... replaced... gas valve... [2/26/18]... Norfolk closed case [3/6/18]... [No] permit for inspection was taken out to make... repairs." (Ibid.) "[R]epairs, ... to... plumbing system, including... replacement of a gas valve... affect... safety of... entire... hot water system by changing... temperatures." (Ibid.)

"[This] requires readjustment of... maximum temperature limit stop at all... tub/shower valves... to ensure... temperature flowing from... fixtures does ['nt] exceed 120[°F]." (Id. p. 11-12). "[T]his change... required... owner... by V[a.] Plumbing Code... [to] set or adjust... limit[ing] temperature of hot water." (Ibid.) "In 2011... this... heater was manufactured, the 2009... V[a.] Plumbing Code was effective, since [3/1/11]; in 2018, when... gas control valve... was replaced... 2012 V[a.] Plumbing Code was effective... [7/14/14-9/4/19]. Both... 2009 and 2012 V[a.] Plumbing Code limit... maximum setting of... tub... valves to 120[°F]." (Id. p. 13). See International Plumbing Code §423.3.

"[P]hot[s] show... [H.W.] suffered... burns to... feet[,], lower legs, in a 'classic sock pattern' on one foot[,], a kneeling pattern with more... burns on... other leg. Her right forearm and hand were burned... a burn pattern down..."

left upper arm, forearm, and hand[;]burns of lesser severity to...back and buttocks, were fairly uniform..." (Id.p.14).

"[B]urns to...hands, arms...are consistant with falling forward under...flow from...faucet; lesser burns to back and buttocks are consistant with falling backwards into water that would['nt] be as hot at...back of...tub...." (Ibid.)*18* "[P]olice documented...heater [T-]stat on [4/24/18]...on... 'C' set point [which] corresponds to 150[°F]...temperature.... However, this temperature is...at...bottom of...heater.... temperature inside...top of...heater and distributed to...hot water system,...can be...20[-]30 degrees higher than...setting on...heater [T-]stat." (Id.p.15).

"[W]ater emitted by...faucet...which [H.W.] was exposed, exceeded safe temperature.... was hot enough to scald her instantly." (Id.p.19). *18.1* "[T]emperature control devices designed to be installed in...piping system to limit...temperature...discharged...have been available for...decades...; however, they were not utilized." (Id.p.19-20). *18.2* "There were no temperature actuated...system controls at...heater...or...fixture at...premises." (Id.p.20).

"[P]roper installation...seasonal inspection...maintenance...adjustment of an ASSE 1016 tub/shower...valve,...and...maximum temperature limit stop, by...owner...would have prevented [H.W.'s]...burn injuries." (Ibid.) "[T]ub/shower...valve...pressure balance cartridge and...maximum temperature limit stop was not installed, adjusted...in accordance with...V[a.] Construction/Plumbing Code.... If...adjusted down to...at or below 120F...it would...[be] impossible for [H.W.] to...suffer[.]...[2nd] degree...burn[s]." (Ibid.)

"[T]he owner...knew or should['ve] known...water hotter than 120[°F] discharging... is a Plumbing Code violation,...it poses a serious risk of scald burn injury. The owner...should['ve] been...testing...temperatures seasonally or periodically...." (Id.p.22). "[T]emperatures in excess of 120[°F]...is an unsafe condition...[and] the existence of [this] unsafe condition could have been easily abated by...owner...." (Id.p.23-24).

"[H.W.'s] scald injury and death was preventable had...domestic hot water system been installed by...owner...appropriately" (Id.p.24-25).

Read George's Exhibits (Pet.Ex.23.A), and breakdown of Nicholson's negligence (Pet.Ex.

23.B). George's 40+ years experience in plumbing design and hot water systems include :

- Detroit Lions (Ford Field);
- Detroit Tigers (Comerica Park);
- Detroit Metro Airport; and,
- MGM; and, Motor City & Greektown Casino & Hotel.

George has written literature on plumbing codes and standards for:

- American Society of Mechanical Engineering (ASME);
- American Society of Heating, Refrigeration, & Air Conditioning (ASHRAE);
- and, American society of Sanitation (ASSE).

George is a monthly columnist for Plumbing Engineer Magazine for 24 years.

George teaches courses on plumbing design

- at : University of Wisconsin;
- University of Minnesota;
- Lawrence Technological University; and,
- Oakland Community College.

George has been appart of every paper issue ever produced by (ASSE) on scald prevention. George has 34+ years experience in triage and burns as a certified EMT, at volunteer fire departments, as a fire fighter, fire officer, and fire chief. (Pet.Ex.23,p.1-3).

George's Report sounds the alarm on Va. Nat. Gas, Norfolk, and Nicholson. He reviewed the evidence (including city and maintenance), and found Nicholson does 'nt pull permits

18 (Pet.Ex.23.A,p.4) "Infrared Phot of Water Flowing...Bathtub."

18.1 (Pet.Ex.23.A,p.p.3) DR's.Moritz & Henriques, Harvard Burn Studies Chart, proving H.W.'s instant burns at 134°F.

18.2 (Pet.Ex.23.A,p.8-11) different ASSE 1016 products not utilized in Petitioner's home. Also, see (Pet.Ex.23.B,p.5) illustration of stop limit device being adjusted.

when installing water heaters in his properties - meaning no inspections. There's no record of doing seasonal maintenance on the heaters; thus, creating dangerous unlawful temperatures to soar above 134°F - which never happens if he installed a stop limit device ASSE 1016 or ASSE 1017. (Pet. Ex. 23, p. 20-22).

(iv) Va. Nat. Gas, Norfolk, and Nicholson, violated (2009) and (2012) Va. Construction/Plumbing Code, International Plumbing Code §423.3. Nicholson violated Va. Residential Landlord & Tenant Act §55-248.13, when replacing gas valve, compromising the entire hot water system.

The Court must not ignore these facts: Va. Nat. Gas and Norfolk, allowed Nicholson to remove to remove "RED TAG" without a proper inspection, to ensure water flowing met compliance of 120°F or less. All (3) are culpable for H.W.'s burns. George's Report disproves Shipman and Commonwealth's theory that H.W.'s burns did'nt happen in seconds. Petitioner begs the Court to read (Pet. Ex. 23.A, p. 3-4).

(v) Commonwealth's argument that :

"An intervening event, even if a cause of death, does ['nt] exempt [Petitioner] from liability if that event was put into operation by [Petitioner's] initial criminal acts. That was Commonwealth v. Jenkins, 255 Va. 516, from 1998. So what we have is there's other events...delay in ...medical care...but everything was put into operation by...original act, which was...scalding in...bathtub....So the way the evidence is, any intervening...cause does ['nt] cut off or stop...cause of liability because that intervening cause alone could not have cause injury or death...."(Pet. Ex. 12.A, p. 293-94).

(vi) Va. Nat. Gas, Norfolk, and Nicholson should'nt be absolved of wrong doing , as the underlying offense was put into operation by the water heater exceeding maximum safe temperature requirement of 120°F. Petitioner has never lived in a home with a gas water heater before. The proof is in the amount of times he had to call maintenance to relight the pilot. (Pet. Ex. 2.A.). Once fixed, February 26, 2018, Petitioner thought (as did Love and Lineberry), the water heater was in good working condition; never thinking temperatures could get that high, or that burns could happen while in the kitchen sending a text. The burns never happen if not for Nicholson's negligence, and Va. Nat. Gas and Norfolk, allowing him to lift "RED TAG" without doing a proper inspection.

(vii) SPECIFIC INTENT

All offenses under §18.2-51, require "specific intent to maim, disfigure, [etc.]." Jones v. Commonwealth, 2015 Va.App. LEXIS 101, *4 (2015); Williams v. Commonwealth, 2011 Va.App. LEXIS 151, *5 (2011); Banovitch v. Commonwealth, 196 Va. 210, 216 (1954). "§18.2-51 ca[nt] be satisfied unless malice is coupled with requisite intent. 'To be guilty... a person must intend up permanently, not merely temporarily, harm another person.'" Williams, at *6 (quoting Johnson v. Commonwealth, 53 Va.App. 79, 101 (2008) (citing Campbell v. Commonwealth, 12 Va.App. 476, 484 (1991))); see Lee v. Commonwealth, 135 Va. 572, 578 (1923).

In Jones, judge found no proof of intent to malicious wounding, and found him guilty of unlawful wounding - which required specific intent; and Commonwealth failed to prove this necessary element. Court of Appeals reversed and remanded assault and battery. Williams struck the father of his girlfriend's children in the face, causing him to lose an eye. Judge reduced §18.2-51.2 to §18.2-51. Court of Appeals reversed and remanded for new trial for assault and battery, because trial judge said Williams "unluckily" caused felonious act. In Banovitch, death occurred. However, facts were insufficient to show specific intent to maim, required in the "Maiming Statute."

Commonwealth failed to prove Petitioner had specific intent to maim H.W., and Doyle erroneously defaulted to presuming intent circumstantially. After reading George's Report, and learning Midazolam Hydrochloride (Versed) was 'nt in H.W.'s body, and Norfolk EMT's failure to intubate, Petitioner sent these reports to several officials in Virginia, with notarized letters, *19* asking that charges be dismissed with prejudice. Very important people in Virginia and Norfolk do 'nt want Petitioner to prove this water heater issue.

(viii) Several cases in the U.S. prove Petitioner and George are right about H.W.'s burns being instantaneous. In U.S. v. Servis, 878 F.2d 1431 (4th Cir. 1989), a child was burned in a bath. Evidence proved the water heater T-stat was set on 140°F - not far off the 134°F recorded in Petitioner's home. A doctor in Servis testified that at 140°F, "significant injury would occur in 5 seconds." (Id. at 1438).

19 (Pet.Ex.24-Va. Governor, Ralph Northam); (Pet.Ex.25-Va. Attorney General, Mark Herring); (Pet.Ex.26-Norfolk Mayor, Kenneth Alexander); (Pet.Ex.27-Norfolk Commonwealth's Attorney, Gregory Underwood); (Pet.Ex.28-Norfolk Commonwealth's Attorney, Jill Harris).

In Carter v. Commonwealth, 2008 Va.App. LEXIS 447 (Va.App.2008), an expert said temperatures at 150°F are "nearly instantaneously."(Id.at *3). In Lareau v. Sears, Roebuck & Co., 142 N.H. 653 (N.H. 1998), an expert said its known in "scientific community since...[40's][,]...and widely disseminated in...[80's]...exposure to 140[°F] water...cause[s] full thickness burns in [5-7] seconds."(Id.at 656). Damages were awarded against landlord for liability, negligence, etc., for failing to warn about unsafe plumbing system. Nicholson and Hudson never warned Petitioner about dangers of a gas water heater. If H.W. does 'nt pass away, Nicholson, and Hudson would be liable for damages without question. George 's testimony would've proved this. It should'nt be assumed H.W. 's burns were intentionally inflicted, and Doyle should'nt default to intent, simply because they could'nt grasp how it happened. Commonwealth did'nt prove every element of malice, and evidence of §18.2-51 was insufficient, and must be reversed.

III COURT OF APPEALS AND SUPREME COURT OF VIRGINIA ERRED IN AFFIRMING TRIAL COURT'S DECISION DENYING MOTION TO SET ASIDE VERDICT FOR CHILD NEGLECT BECAUSE EVIDENCE WAS INSUFFICIENT PETITIONER ACTED WILLFULLY, TO PROVIDE NECESSARY CARE FOR H.W. OR CAUSE THE DEATH OF H.W. (R.975-82).

STANDARD OF REVIEW

Petitioner Motioned to Set Aside Verdict for §18.2-371.1, because evidence was insufficient he willfully refused H.W. medical care, and did'nt cause her death. Petitioner has already presented evidence disproving Commonwealth's theory.

Va. Supreme Court Rule 3A:15 states:

"The court must enter a judgment of **acquittal** if it strikes...evidence or sets aside...verdict because **evidence was insufficient**....The court **must grant a new trial** if it sets aside...verdict for any other reason."

When challenging sufficiency of evidence on appeal, the court reviews "evidence in...light most favorable to...Commonwealth. Ward, at 654. Convictions wo'nt be reversed "unless plainly wrong or without evidence to support it." Wright, at 703. "[T]he appellate court is...obligated to set aside...judgment when...contrary to...law and...judgment is plainly wrong." Tarpley, at 256. The Fourteenth Amendment to the U.S. Constitution "protects...against conviction 'except upon proof **beyond a reasonable doubt of every fact necessary**...which he is charged.'" Jackson, 443 U.S. at 310 (quoting Winship, 397 U.S. at 364). U.S. Supreme Court can hear Petitioner's sufficiency of evidence claims.

ARGUMENT

Va. Code §18.2-371.1 states:

"Any person responsible for...care of a child under...18 who by willful act or omission or refusal to provide any necessary care for...childs health,causes or permits serious injury to...life or health of a child."

Doyle found Petitioner guilty of §18.2-371.1 for his "conscious decision to not seek medical care...instead adminster[ing] care,which...made things worse...."

(APPENDIX B, p.427). **This was an incorrect analysis of §18.2-371.1** . Here 's why:

(i) To be guilty of §18.2-371.1 . one must refuse to provide any necessary care. Commonwealth was required to prove Petitioner was 'nt willing to give/allow H.W. to receive care/treatment for burns. There 's overwhelming evidence Love and Petitioner provided H.W. care; buying numerous supplies at CVS and Walgreens. (Comm. Ex. 24 & 26). Love and Lineberry testified that Petitioner assisted with H.W. 's care, with the items Nurse Slaughter and pharmacist told him to buy. While at CVS, he told Love she could go to hospital. She did 'nt. Love 's affirmative decision not to go to the hospital, *20* removed Petitioner from care taker role. Clearly, Petitioner allowed H.W. to receive care/treatment. There 's zero evidence of him not allowing Love to treat H.W.

(ii) §18.2-371.1 requires refusal to be of necessary care. Nothing in the Statute defines necessary care as care by medical professionals. Besides, Slaughter said treat from home. The pharmacist saw H.W. 's burned feet photo, and helped pick out items. Love was in medical school. What is necessary is Love 's choice for H.W. 's care. There 's no law mandating taking someone to a hospital. Which is why people still have live births at home, and people living in rural areas (i.e. farms) treat from home. Love told police she was raised on an indian reservation in Oklahoma, and it was rare she goes to hospital; opting to apply Vinegar to H.W. 's burns- lie she did with her ex-husband. *21* Love and Petitioner provided what they believed was proper care, based on information they received. This was by no means refusal to provide medical care.

(iii) §18.2-371.1 requires refusal of necessary care to be H..W. 's cause of
20 Testified at trial when asked why she did 'nt go to hospital, "I do 'nt know."
21 Love said H.W. 's father, Ivan Williams, burned his feet, and they chose to use Apple Cider Vinegar on them, after hospital could 'nt do much for the pain.

death. Norfolk EMT's failing to intubate, failing to administer Midazolam Hydrochloride (Versed), and causing Acute Hypoxic Ischemic Changes to H.W.'s brain is what killed her. Therefore, refusal of necessary care was 'nt H.W.'s cause of death.

H.W.'s burns were treated with Lidocaine burn gels. Too much was absorbed, causing a seizure. H.W. was alive when Love gave H.W. to EMT Hughes. At some point, H.W. rode to hospital without oxygen and blood-flow to the brain, killing her. Love and Petitioner had no way of knowing burn gels caused toxic level in H.W. Even if their care may have been incorrect care, it still does 'nt equate to refusing care as §18.2-371.1 requires.

(iv) §18.2-371.1 makes it a crime to engage in willful omissions causing serious injury. Legislature's use of **willful** is instructive when analyzing **intent of Statute**. **Willful** means act done with **bad purpose** or **without justifiable excuse**. (See Collado v. Commonwealth, 33 Va.App. 356 (2000) (While unspecific, knowledge particular conduct will likely result in injury or illegality.)) **Willful** "is stronger than voluntary or intentional and, , , equivalent of malicious, evil, or corrupt." White v. Commonwealth, 68 Va.App. 111, 119 (2017). (See Ellis v. Commonwealth, 29 Va.App. 548 (1999) (Willful denotes intentional, knowing, or voluntary act, distinguished from accidental.)) **Choosing to treat H.W. at home was 'nt malicious, evil or corrupt.**

(v) Since 1999, courts have **reversed §18.2-371.1 cases because actions were 'nt willful**. In White, supra, mom was convicted of §18.2-371.1 after 5-year-old-son's body was found in septic tank. Evidence was **unsufficient** that she had **knowledge and consciousness that injury would result, while leaving him unsupervised**. This is Petitioner's argument too. In Mangano v. Commonwealth, 44 (Va.App. 210 (2004)), a dad told his son to put gun away instead of taking it. Commonwealth **failed to establish knowledge and consciousness of injury**. §18.2-371.1 and reckless handling of firearm was **reversed**. In McBeth v. Commonwealth, 1999 Va.App. LEXIS 412 (Va.App. 1999), mom's approach to injuries were 'nt gross, wanton, or culpable to show reckless disregard for human life. Injuries were serious, **but non-life threatening**. H.W.'s burns were severe, **but non-life threatening**-not until seizure. H.W. even walked into the kitchen with gauze on her feet, asking for juice, leading Love and Petitioner to believe she was okay.

A case in line with Petitioner's **wrongful convictions** is Davis v. Commonwealth, 2012 Va.App. LEXIS 343 (Va.App. 2012). Evidence **did'nt support conviction** of §18.2-371.1. Davis did'nt disregard care of child. He cared for child once realizing distress, by washing child, calling care takers for advice, and calling 911. In Riddick v. Commonwealth, 2014 Va.App. LEXIS 280 (Va.App. 2014), though negligent in care for child's **burned foot was inattention and in advertence** . §18.2-371.1 was reversed.

Petitioner wanted Univ. of Va. Pathologist, DR. Lopes at trial because of case Commonwealth v. Griffis, 2019 Va.Cir. LEXIS 13 (Norfolk Cir. 1/10/19); where Judge Hall set aside §18.2-371.1 because Commonwealth **failed to prove defendant caused Hypoxia to the brain. H.W. suffered Acute Hypoxic Ischemic Changes**. In Ellis ,supra, evidence was **insufficient** mom's actions **were willful act**. Though negligent by forgetting to turn gas jet off; failing to check operability of smoke detectors; and, intentionally leaving home to visit friend in another apartment; evidence **failed to show knowledge or consciousness that children would be injured by departure**.

If Ellis, McBeth, White, and Mangano were reversed, Petitioner's charges should be too, in light of the evidence he's presented here. If Ellis' actions were'nt willful, Petitioner's were'nt either. Petitioner lacked knowledge and consciousness of dangers of too much Lidocaine. There's no evidence he wanted H.W. to suffer or die. There's no willful omission, and no refusal to provide H.W. necessary care. Evidence is insufficient, and §18.2-371.1 must be reversed.

IV COURT OF APPEALS AND SUPREME COURT OF VIRGINIA ERRED IN AFFIRMING TRIAL COURT'S DECISION TO DENY MOTION TO SET ASIDE VERDICT ON FELONY HOMICIDE BECAUSE H.W.'S DEATH DID'NT OCCUR IN COMMISSION OF CHILD NEGLECT.

(R.982-84).

STANDARD OF REVIEW

Pursuant to Va. Supreme Court Rule 3A:15, already cited, Petitioner Motioned to Set Aside Verdict for §18.2-33 .When examining challenges to sufficiency of evidence on appeal, the court reviews "evidence in...light most favorable to...Commonwealth." Ward, at 654. Convictions wo'nt be reversed "unless plainly wrong or without evidence to support it." Wright, at 703. "[T]he appellate court is...obligated to set aside...

judgment when...contrary to...law and...judgment is plainly wrong." Tarpley, at 256.
Through the Fourteenth Amendment to the U.S. Constitution, and Jackson, 443 U.S. at 310
(quoting Winship, 397 U.S. at 364), previously cited, the U.S. Supreme Court can hear
Petitioner's sufficiency of evidence claims.

ARGUMENT

Va. Code §18.2-33 states:

"The killing of one accidentally, contrary to...intentions...while in...
prosecution of...felonious act[s] other than...specified in §§ 18.2-31
and 18.2-32"

As seen in **ERROR III**, evidence was **insufficient** to find Petitioner guilty of
§18.2-371.1; thus, **insufficient** to find him guilty of §18.2-33. Here's why :

(i) In order to be guilty of §18.2-33, there **must be** "malice intrinsic in...comm-
ission of...predicate felonies." Montano v. Commonwealth, 61 Va.App. 610,614 (2013).
For violations of §18.2-33, the Commonwealth "**must prove beyond a reasonable doubt a**
felony...involved substantial risk of life." Cotton v. Commonwealth, 35 Va.App. 511,
517 (2001).

Treatise 1 Virginia Criminal Law & Procedure §3.8

"Summary of Mental Elements of Homicide" (Pet.Ex.29) states:

"In practice [2nd] degree murder convictions are **hard to get when...theory of**
culpability is neglect, even when...neglect is wanton, conscious disregard of
known risks...you will see cases where...accused clearly was aware of...risk,
yet only involuntary manslaughter is charged or found. [2nd] degree...[is]
rare because...actual awareness of risk is difficult to establish...."(Id.p.1).

This Treatise chapter says **it must be proved** Petitioner "**embraced the risk**" that
H.W. would die while treating burns at home. "One can not **consciously disregard**" a risk,
"**without first regarding consciously the same thing.**"(Id.p.2) *22* Also, "[t]he Essex
Court said, if it['s] an intentional doing of a risky act, malice may be found, but if...
risks were encountered only because of...inadvertent manner of doing an act, no malice
could be found." (Ibid.)(citing Essex v. Commonwealth, 228 Va. 273,281 (1984)).

(ii) Commonwealth **failed to prove** Petitioner had requisite knowledge and mens rea,
the Lidocaine was harming H.W.; or death would ensue; or Love and him intentionally applied
too much Lidocaine wanting H.W. to die.

22 Discussing Essex, at 280, and King v. Commonwealth, 217 Va. 601,607 (1977).

(iii) Not taking H.W. to hospital **is 'nt what killed her., and their not responsible for negligence of EMT's.** George's Report's, negligence of EMT's, and the **Acute Hypoxic Ischemic Changes** lead Petitioner to give medical reports to a nurse at Hampton Roads Regional Jail ("HRRJ")-to explain the medical. HRRJ Nurse (wishing to remain anonymous), said **Petitioner was 'nt at fault for H.W.'s death; EMT's never gave her the medication; and di 'nt intubate H.W. in the ambulance.** HRRJ Nurse told Petitioner to open investigation versus doctors and EMT's through Va. Department of Health Professions ("VADHP"), and Va. Office of Emergency Medical Services ("VAOEMS"). He did that on December 19, 2019. (Pet.Ex.21). January 7, 2020, VADHP opened said complaint(s) against doctors; (Pet.Ex. 21.A); ***23*** complaints were forwarded to VAOEMS against EMT's, February 18, 2020. (Pet.Ex.21.B). March 6, 2020, VAOEMS closed investigation, saying regulations were 'nt violated. (Pet.Ex.21.C). March 11, 2020, VADHP followed suit. (Pet.Ex.21.D). Petitioner wrote VAOEMS demanding an explanation. He got one March 25, 2020. (Pet.Ex.21.E). ***24*** The response means EMT's got approval from a physician to administer Midazolam Hydrochloride (Versed), **but negligently failed to give approval to intubate.** Hughes already acknowledged the medication was used by EMT's for intubations - so why did 'nt they intubate.

(iv) March 10, 2023, Petitioner asked both agencies to reopen investigation. (Pet.Ex.21.F). He wanted to know **who OEMS physician was;** alert them to Hughes and Luckie's conflicting testimony; and, point out regulations EMT's violated. VAOEMS closed the case again, May 3, 2023, on same grounds. (Pet.Ex.21.G). First, Midazolam Hydrochloride (Versed), **could 'nt be administered to H.W., and also, not be present in her body. It 's impossible.** Second, here are the regulations EMT's violated on April 24, 2018:

• 12 Va. Administrative Code §5-31-990 - False Statements or Submissions.

"EMS personnel may **not make false statements, misrepresent, file false credentials** or willfully conceal material information to the board, ... department, or ... [OEMS] regarding application for agency licensure, vehicle permitting, certification, endorsement, or designation or in connection with an investigation conducted by the board, ... department, or ... [OEMS]."

• 12 Va. Administrative Code §5-31-1000 - Falsification of Materials.

"EMS personnel may **not willfully alter or change...** appearance or wording of any license, permit, certificate, endorsement, or designation, **prehospital report,** official agency documents, or any forms submitted to the [OEMS]."

23 Some how, Connie Luckie is 'nt regulated by VADHP.

24 "The nature of your complaint pertains to...clinical practice of EMS providers.... EMS providers may only practice with...authority...ubder...direction of...OEMS endorsed Operational Medical Director (physician)." - Ronald Passmore, Office of Emergency Medical Services Manager.

•12 Va. Administrative Code §5-31-1070 - Extraordinary Care Outside of Protocols.
"In...event of an **immediate threat to loss of life or limb**, medical control may **authorize an EMS provider** with specific training to **provide care not authorized under existing protocols**. The circumstances must be documented on the **patient care report**."

(v) INTUBATION CASES IN THE U.S

There are persuasive cases in the U.S. for **failure to intubate**. Haag v. Fairview Health Services, No.A.08-1465(Minn.App.2009), a malpractice action, where a doctor said, "[t]here['s] no question...**failure to intubate was causally linked to**" death. (Id.at 4); and, "standard of care was systemically breached...**[for] failure to inubate**." (Id. at 5). In Heather Lawson, Minor, & Mother, Cindy Lawson v. Y.D. Song, M.D., Inc., (Ohio App. 1997), summary judgment was granted, but on appeal, was **reversed and remanded**; as child was 'nt intubated until 2 hours, and 20 minutes after birth, making doctors **negligent for not intubating sooner**.

In Oliver v. S.Cent.Corr.Ctr., (W.D. 2022), hospital defendant 's moved to dismiss "COUNT III, Failure to Properly Train and Supervise" for **EMT's failure to intubate** "decendant before loading him into ambulance." (Id.at 3). The Court said, "claims against... EMT's[,]...allegations are enough...."(Id. at 3-4). **Like Petitioner's case, Norfolk EMT's had combined 113 years experience on that ambulance, and had an obligation to intubate H.W. Had they, She would be alive today.**

(vi) H.W. 's **death was 'nt in commission of §18.2-371.1**, and must be some other **felonious act**. Commonwealth might have had a better argument for Involuntary Manslaughter (§18.2-36), but not §18.2-33.

§18.2-36 states:

"[K]illing of one accidentally contrary to...intentions..., in...prosecution of some unlawful, but non-felonious act...or...improper performance of a lawful act." Byrd v. Commonwealth, 89 Va. 536 (1893); Fadely v. Commonwealth, 208 Va. 198 (1967); Lewis v. Commonwealth, 211 Va. 684 (1971); Gooden v. Commonwealth, 226 Va. 565 (1984).

As seen in Treatise 1 Virginia Criminal Law & Procedure §3.7

[2] "Criminal Negligence..." (Pet.Ex.29.1), which states:

"Criminal negligence consists of death risking, volitional action done with a reckless and wanton disregard for...lives...The extensive borrowings...are reflected in...definition...from Essex v. Commonwealth: 'Where death proximately results from...want or ordinary care as practiced by a reasonable... person,...causative negligence is actionable....If...negligence is so gross, wanton and culpable...show[ing] reckless disregard of human life, a killing

resulting...from,although unintentional,is...crime,punishable as involuntary manslaughter." ((Id.p.2)).*25*

Petitioner is 'nt conceding to §18.2-36 . He's referencing the statute because Commonwealth did 'nt charge him with this,and they knew H.W. 's death was an accident;in conjunction with reports and evidence he 's presented here(which was suppressed in the court record);and since H.W. did 'nt die in commission of §18.2-371.1 ,evidence is insufficient for §18.2-33,and must be reversed and remanded for new trial or dismissed.

25 Essex,at 283 (citing King, at 607). (King is leading case for this concept.)(See also, Banks v. Commonwealth, 41 Va.App. 539 (2003) (caused death when knocking victim to surface of unlit highway ramp,then abandoned him,running away when car that struck him approached.)
END OF DOCUMENT.

REASON FOR GRANTING PETITION

*Petitioner did 'nt intentionally inflict burns on H.W.,and did 'nt intentionally apply too much Lidocaine to her skin,wanting her to suffer or die. There 's no evidence of this,and for that alone,his convictions should be overturned.

*Commonwealth erroneously introduced false evidence multiple times.Specifically, Love's testimony;April 3rd's in limine evidence of screenshot sent to Love,that was doctored to mislead the court;and,Shipman's opinion testimony,that claimed burns could 'nt occur in seconds;and that H.W. was immobile when burned in a full tub of bath water.

*The proof Petitioner presents from Ron George,and burn chart,proves temperatures at front of tub are way hotter than back of tub;and the unlawful temperatures involving Petitioner's water heater with cases in the U.S. proving H.W. 's burns were instant at 134°F.Also,it's impossible H.W. was in a fuull bath,because she 'd have burns in places for which she did not;(i.e.face,chest,vaginal area);which also makes it impossible she was laying face-up immobile-her back and buttocks could;nt be burned,as they would've been suctioned to the bottom of porcerlain tub that had no grip-pad.

It's clear Va.Nat. Gas(Virginia),Norfolk,and Nicholson have alot at stake if Petitioner's convictions are overturned for their (all inclusive) negligence regarding water heater.Especially when no proper inspection was performed to ensure safe water heater could 'nt exceed safe temperature of 120°F. International and Virginia law,require owners/landlords to install stop-limit devices at water heater and faucets.Neither were done .

*Norfolk is involved on the back-end of this tragedy,as Norfolk EMT's failed to intubate H.W.,and failed to administer Midazolam Hydrochloride(Versed):This medicine could 'nt be administered,and also,not be in H.W. 's body-says toxicologist Luckie's testimony. Simply put,Virginia and Norfolk are worried about civil liability;and,since

Petitioner is already a felon, they want him to **take the fall for H.w. 's injuries.**

***Petitioner did not cause the Acute Hypoxic Ischemic Changes to H.W. 's brain. Not being intubated caused H.W. 's death, and she rode to the hospital for the last few minutes on the ambulance without oxygen and blood flowing to her brain.**

If the Court does 'nt grant his Petition for Writ of certiorari, Va. Nat. Gas(Virginia), Norfolk, and Nicholson will get away with these ciolations. Virginia and Norfolk will continue to act as if they have complete autonomy, and **will always violate the rights of Virginians in these situations.*

***Your Court has already ruled that state convictions obtained by knowingly using false evidence or testimony will not be tolerated under the Fourteenth Amendment to the U.S Constitution.**

***Virginia's Court's have also ruled that the use of past bad acts to prove the current offenses, is infact, reversible error.**


CONCLUSION

FOR THE REASONS SET FORTH, Petitioner, John Tucker Hardee, respectfully asks this Court to grant his Petition for Writ of Certiorari, to **dismiss** his charges of Malicious Wounding, Child Neglect, and Felony Homicide, or to **reverse and remand for a new trial.** Thank You.

Respectfully submitted,

#1491532

JOHN TUCKER HARDEE


(Signature)

Date: JANUARY 20, 2026