Selected Appellate Decisions for Law Enforcement Officers

June 1, 2018– June 1, 2019

- **U. S. Supreme Court**
- **Fourth Circuit Court of Appeals**
- **Virginia Supreme Court**
- **Virginia Court of Appeals**

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Please refer to

2019 Appellate Update Master List

for a complete listing of new cases of interest to law enforcement officers.

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Topics for Presentation

- Fifth Amendment
- Fourth Amendment
- Crimes Against Persons
- Crimes Against Property
- Drug & Gun Offenses
- Traffic Offenses
- Police Use of Force

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New Cases on Interviews & Interrogations

FIFTH AMENDMENT

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Right to Remain Silent

- Defendant in custody. When agents read *Miranda* warnings, defendant interrupted approximately halfway through to inform the officers that he "wasn't going to say anything at all."
- Agents continued the *Miranda* warnings, defendant indicated he understood his rights, and defendant made a statement.
- Court: Statement suppressed. Defendant unambiguously invoked his right to remain silent, but nevertheless the officers continued interrogating him and thus failed to scrupulously honor the defendant's invocation.
- Once a suspect unambiguously invokes the right to remain silent, all questioning must cease.
- *U.S. v. Abdallah,* 4th Circuit December 2018

Right to Remain Silent

- Defendant in custody. After learning of his *Miranda* rights and making a few initial statements, the defendant stated: "I don't have no more to say to you."
- Court: Statement suppressed. Defendant's statement essentially meant: "I am invoking my right to remain silent."
  - Context did not reasonably support any other interpretation, though in another context, it could have meant "I've told you everything I know about this subject, and there's no more for me to say about it."
- A suspect may invoke his right to remain silent and terminate questioning by simply stating "I do not want to answer any more questions."
- *Adkins v. C/w*, Va. Supreme Court March 28, 2019 (Unp.)

“Custody” & ”Law Enforcement”

- Court: Defendant in prison was in custody for the purposes of *Miranda* when private contractor questioned him regarding ownership of contraband.
- Investigators do not have to provide *Miranda* warnings to all inmates, but here the seizure and transfer of the defendant was the “functional equivalent of arrest.”
- Defendant was subjected to additional and substantial restraints on his liberty, in addition to those he experienced every day as an inmate, thus the totality of the circumstances reasonably suggested a coercive environment & therefore *Miranda* is required.
- *C/w v. Briggs*, Ct. App. January 2019 (Unpublished)

New Cases on Search & Seizure

FOURTH AMENDMENT

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Search Warrant Required for Cell-Site Location Data

- Accessing seven days of historical cell-site location data is a Fourth Amendment search that normally requires a search warrant.
- Consent or exigent circumstances may still apply as exceptions to the warrant requirement.
  - Court approvingly cited lower court opinions concerning bomb threats, active shootings, and child abductions
- *Carpenter v. U.S.*, U.S. Supreme Court, June 22, 2018

Carpenter Lesson

- In any case where you are seeking historical cell-site location data, law enforcement officers should obtain a search warrant for that data.
- Although traditional Fourth Amendment exceptions, such as exigent circumstances, consent of the device's owner, etc., may still apply in individual cases, the default rule should be to get a warrant.
  - Remember that §19.2-70.3(E)(5) requires you to file a written statement with the Clerk if you obtain real-time location data without a warrant in an emergency.

Inventory Searches

- Officer conducted inventory search of car because the car "was being towed and that way we were not responsible for anything left in that vehicle."
- Government introduced no other testimony or documentary evidence regarding the Department's policy on inventory searches of cars.
- Court: Evidence suppressed. There must be "sufficient evidence" of inventory policy, whether through introduction of written police department rules and regulations or through police officer testimony.
- *U.S. v. Young*: 4th Circuit, October 25, 2018

Search Warrant Based on Marijuana Possession

- *U.S. v. Lyles*: 4th Cir., December 14, 2018
- Court suppressed a warrant for a house based on finding 3 marijuana stems and rolling papers during a single trash pull.
  - Warrant sought evidence of possession of controlled substances, possession with intent to distribute controlled substances, and money laundering
- "The miniscule quantity of marijuana detected in the trash pull, again, does not provide the requisite foundation to search any and all persons in the home, let alone any other location."

Scope of Warrant

- Warrant permitted the seizure of any computers, toiletries, or jewelry, and the search of every book, record, and document in the home
- Court: The connection of such things to the personal possession of marijuana is, “to put it gently, tenuous.”
- Court: Warrant application lacked any nexus between cell phones and marijuana possession.
- Insufficient reason to believe that any cell phone in the home, no matter who owns it, will reveal evidence pertinent to marijuana possession simply because three marijuana stems were found in a nearby trash bag.

31 Day Delay to Get Warrant

- *U.S. v. Pratt*: 4th Cir., February 8, 2019
- Defendant prostituted a child, trafficking her over state lines and producing child pornography by taking photos of her with his phone.
- When FBI agents arrested the defendant, he confessed that his phone had images of the victim on his phone.
- Agents seized the phone. However, agents did not obtain a warrant for the phone for another 31 days.
- After obtaining and executing the warrant, they discovered child pornography on the device.

Court: Evidence Suppressed

- Court: 31-day delay violates the Fourth Amendment where the government neither proceeds diligently nor presents an overriding reason for the delay.
- Court rejected the argument that the phone was, in and of itself, evidence and therefore could be held indefinitely because it had independent evidentiary value, like a murder weapon.

What Delays Are Permissible?

- *Pratt* Court distinguished a number of other cases where similar delays were lawful.
- For example, in *Vallimont*, delay was reasonable because the investigator was diverted to other cases, the county's resources were overwhelmed, and the defendant diminished his privacy interest by giving another person access to the computer.
- Also: *Laist* – delay was reasonable because the agents worked diligently on the affidavit; they were responsible for investigations in ten counties; and the defendant consented to the seizure and had been allowed to keep certain files, diminishing his privacy interest.
- Court also cited with approval delays due to weekends, holidays, tactical decisions, legal questions, and technical needs.

Exigent Circumstances

- Court: Exigent circumstances existed when officer saw a firearm in plain view on the floorboard of the vehicle from which the defendant had just fled, leaving the door open.
- Firearm was in the middle of the road where members of the crowd or the defendant, if he had returned to his vehicle, could immediately have accessed the loaded firearm.
- Court found that there was not sufficient time to secure a warrant as numerous people could have potentially obtained the firearm in the interim.
- *Moore v. Commonwealth*, 69 Va. App. 30 (2018)

K9 and Probable Cause

- K9 indicated that defendant, a passenger, possessed drugs during traffic stop, but officers could not find drugs during search on side of the road.
- Officers transported defendant to police facility where they found drugs.
- Court: Affirmed. Coupled with the evidence of the officer's training and experience, the history of the K-9 team, and the officer's testimony that the dog alerted consistent with her training, there was more than sufficient evidence to support the conclusion that the dog was reliable.
- *Haywood v. Commonwealth*, Ct. App., October 9, 2018 (Unp.)

Pat-Down v. Search

- Officer responded to a call for a larceny & saw defendant, who matched the description of the fleeing suspect, “crouching down” in the dark behind trucks in a parking lot adjacent to the store.
- Defendant fled & jumped into bushes when the officer was “within an arm’s length” of him.
- Officer had to pull the defendant out of the bushes before he detained him.
- Officer patted-down the defendant and felt a “round, cylindrical tube” in the defendant’s pocket.
- Officer removed it and found that it contained cocaine

Court: Suppressed

- Officer had a reasonable basis for frisking the defendant but lacked probable cause to remove the tube from his pocket.
- The "plain feel" doctrine applies only when the object at issue is immediately recognized as being illegal.
- Court complained that the officer did not say whether he suspected that the tube could be drug paraphernalia or that he suspected the object he felt was a weapon.
- *Weathersby v. Commonwealth*, Ct. App., October 9, 2018 (Unp.)

Warrantless Arrest in Curtilage

- Defendant led police on a high-speed chase on his motorcycle.
- 30-40 minutes later, officers identified defendant and located him at his home. They banged on his door and demanded he exit. Defendant stepped out onto driveway and officers arrested him.
- Court: Warrantless arrest suppressed. At the time of arrest, although they had probable cause, officers had no exigency.
- When he exited the house, defendant seemingly posed no threat to the officers, nor did he show any signs that he intended to flee, nor was there evidence to destroy.
- *Carroll v. Commonwealth*, Ct. App., November 20, 2018 (Unpublished)

PART TWO:
CRIMES AND OFFENSES

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ANIMAL CRUELTY

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Brutal Slaughter of Animal

- *Sutter v. Commonwealth*, Ct. App. September 26, 2018 (Unpublished)
- Defendant and her boyfriend took a pig from the ASPCA after hours without authority and stabbed it to death with over thirty-one stab wounds, nearly decapitating it.
- Court: Conviction affirmed. Killing was inconsistent with approved methods of slaughter.

Court's Explanation:

- "Our holding in this particular case should not be interpreted in any way as somehow criminalizing the lawful conduct of the thousands of individuals (be they farmers, butchers, or otherwise) or businesses that routinely slaughter livestock, which they lawfully possess, in the normal course of their daily business."
- "Rather, our opinion in this case bears specifically on the bizarre decision and conduct of appellant and her co-defendant, who decided to kill an animal – which was not theirs – in the yard and parking lot of the local SPCA and animal shelter, where appellant was then employed."

ASSAULTS

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Forceful Attempt to Kiss

- *Kelly v. Commonwealth*, 9 Va. App. 617 (2019)
- Defendant convicted of Assault when he grabbed victim's face against her will while she was trying to pull away from him as she repeatedly told him, "No."
- Court rejected his defense that he had "implied consent" to the touching because he and victim were coworkers and he did it "in an effort to express his gratitude."

Aggravated Malicious Wounding

- *Ellis v. Commonwealth*, Ct. App., May 28, 2019
- Defendant savagely attacked and killed his mother with his bare hands, and then with a hammer, while she was asleep.
- The medical examiner found that the victim had suffered numerous injuries that would have been fatal if inflicted in isolation.
- The victim suffered multiple contusions, which develop only while a victim remains alive.
- The trial court convicted the defendant of First Degree Murder and Aggravated Malicious Wounding.

Court: Affirmed

- Court: If, as in this case, it is established by the evidence and reasonable inferences therefrom that there was a temporal interval between the initial malicious wounding, with the victim remaining alive, and the subsequent death of the victim, then the defendant can be convicted of both aggravated malicious wounding and murder.
- Although the Court agreed that a victim must survive, if only briefly, for an injury to be considered "permanent" within the context of § 18.2-51.2, in this case the evidence proved that the victim remained alive during intervals of the attack.

CHILD ABUSE & NEGLECT

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Child Drowning

- *Caswell v. Commonwealth*: Ct. App., July 24, 2018 (Unp.)
- Defendant, a babysitter, was aware that the older child knew how to unlock a sliding door in the house but could not swim without floatation devices and supervision.
- Children's mother asked defendant to secure a sliding door that led to the family's swimming pool.
- Defendant did not secure the door.

Conviction Affirmed for Allowing Child to Drown

- The evidence demonstrated that the defendant did not have contact with the children for about two hours, even though their playroom was visible from the kitchen, where she claimed she had been.
- Court: Leaving the sliding glass door in a playroom unsecure meant exposing the children to extreme danger, specifically the access to a five-foot-deep swimming pool that was just steps away from their playroom.

CHILD SOLICITATION

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Solicitation by Text Message

- *Commonwealth v. Murgia*: May 16, 2019
- Defendant sent 16-year-old track athlete sexually suggestive messages, including one in which he described in lengthy detail a dream in which he engaged in various sexual acts with the child.
- Defendant referred to the victim in text messages as "yo sexy self and told her, "I'm gonna stretch your tight ass legs out and loosen them hips up, too."
- Court of Appeals reversed conviction for solicitation of a minor under 18.2-374.3(D).

Va. Supreme Court Reinstates Conviction

- Commonwealth was not required to prove that the defendant actually committed a crime of solicitation, only that he used a communications system for the purpose of soliciting the act.
- Intent may be inferred from the “words alone” used by the accused.
- Defendant used a communications system for the purpose of soliciting the victim to commit sexual acts proscribed by Code § 18.2-374.3(D).

DRUGS

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Accommodation is a Prior Conviction

- *Jones v. Commonwealth*: 69 Va. App. 582 (2018)
- Court: Any prior conviction of an offense under § 18.2-248, including a conviction as an accommodation under § 18.2-248(D), triggers the enhanced punishment provisions of § 18.2-248(C).
- Accommodation language in § 18.2-248(D) is a partial affirmative defense to mitigate the punishment for the crime of distribution of a controlled substance; however, it is not a separate offense requiring that the Commonwealth prove different elements.

Drug Conspiracy

- *Lavalliere v. Commonwealth*, Ct. App., April 9, 2019 (Unpublished)
- Defendant purchased large quantities of heroin between fifteen and thirty times from his source. He also purchased it, even when he bought larger amounts, at the same rate, and did not negotiate or receive a discount.
- At trial, his source testified that the defendant was one of his best customers and that he "felt bad" about always charging the same rate. He also alerted the defendant when a batch of heroin was possibly subpar.

Conspiracy Conviction Affirmed

- "The existence of a chain of commerce does not, in and of itself, constitute a conspiracy solely because the goods sold, and re-sold, are illegal."
- Given that the source had an interest in defendant's re-distribution and that he continued to supply defendant, who was only able to be such a valuable customer because he was reselling, Court found that the evidence was sufficient to show that the source furthered, promoted or cooperated in defendant's redistribution.

EXTORTION & HUMAN TRAFFICKING

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Human Trafficking

- *Carr v. Commonwealth*, 69 Va. App. 106 (2018)
- Defendants forced the victim to return under duress to hotel to resume prostitution after she tried to escape.
- Abduction conviction affirmed. Victim's eventual escape from that hotel did not override the fact that the defendant intended to deprive the victim of her personal liberty at the time he forced her to return.

Sex Trafficking Conviction Under § 18.2-357.1 Affirmed

- Court: Sex-trafficking statute does not require force or coercion.
- Defendant's involvement in the victim's return to the hotel to resume prostitution, and the payment of his hotel room from her prostitution earnings, were sufficient to prove the defendant's guilt.
- The Court rejected the defendant's argument that the victim was a "willing participant" who engaged in prostitution to support her heroin habit and acquire money to obtain "a better life."

Sex Trafficking under § 18.2-357.1

- *Johnson v. Commonwealth*, 69 Va.App. 639 (2019)
- Court: § 18.2-357.1(A) (Pandering) does not require the element of force, intimidation, or the threat of force or violence, although subsection (B) does.
- The fact one of the women was engaged in prostitution before she met the defendant and continued to engage in prostitution after he was incarcerated did not change the fact that he solicited, invited, recruited, encouraged or otherwise caused her to engage in prostitution after she met him.
- Statute does not require the accused to have been the sole cause or the original cause for the person to engage in prostitution.

Robbery & Extortion

- *Livingston v. Commonwealth*, Ct. App., June 5, 2018 (Unp.)
- Defendants threatened the victim at his residence, demanding money. One showed the victim a firearm and said he was "going to have to take blood." Defendant said, "Let's smoke him now. We have enough room in the trunk. Let's do it right now."
- Victim took them to an ATM and gave them cash.
- Victim testified that he felt helpless because he was afraid he would be shot if he tried to run away.

Court: Conviction Affirmed

- Court held that the evidence was sufficient to prove that the defendant was guilty of abduction for pecuniary gain.
- Court found that the threat to “smoke” the victim, coupled with the co-defendant’s threat and display of a handgun in his waistband, were intended to collect the debt by intimidating the victim.

FIREARMS OFFENSES

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Shooting at an Occupied Vehicle

- *Jones v. Commonwealth:* 821 S.E.2d 540 (2018)
- Defendant, while inside a vehicle, shot another person who was also inside the vehicle.
- Va. Supreme Court ruled that the statute does not require that the shooter be located outside of the vehicle when he fired shots at an occupied vehicle.

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Use of a Firearm in Robbery

- *Barney v. Commonwealth*, 69 Va. App. 604 (2019)
- Defendant committed two robberies.
- During the robberies, defendant made statements and gestures to imply that she had a firearm.
- Her co-conspirator kept his hand in his pocket and told the clerk not to move “and won’t nobody get hurt.”
- Defendant gave the clerk at the first robbery a note that said the clerk should give them the money “and not make a sound if she wanted to live.”
- At the second robbery, defendant told the clerk she had “two guns” facing her, and “if the clerk went any slower that she was going to shoot her.”

Court: Evidence Sufficient

- Court agreed that evidence was sufficient that, because the defendant said she had a gun in the second robbery, she used one at the first robbery, even though no firearm or facsimile of a firearm was ever seen or recovered.
- *Note: Conviction reversed on jury instruction error.*

Use of Firearm as Accessory

- *Harris v. Commonwealth*, Ct. App., October 9, 2018 (Unpublished)
- Defendant and his confederate robbed the victim at gunpoint while she was at home. Throughout the robbery, the defendant's confederate held a shotgun and pointed it at the victim. The defendant never handled any firearm. As they fled, the defendant told his confederate to shoot into the house.
- Court: Defendant, who was acting in concert with his confederate, was guilty as a principal in the second degree of possessing and using the firearm used by his accomplice.

Shooting into Occupied Dwelling

- *Tate v. Commonwealth*, Ct. App., April 16, 2019 (Unpublished)
- Defendant fired multiple shots into two separate occupied rooms at a motel.
- Court: Unit of prosecution under § 18.2-279 is each separate act of shooting.
- Gravamen of the offense is the distinct act of shooting at an occupied building in a manner that may put the occupant or occupants in peril.

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IDENTITY THEFT

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Stealing Checks

- *Taylor v. Commonwealth*, Ct. App., December 4, 2018 (Unpublished)
- Defendant stole checks, entered a bank, signed the back of the check with her own name and presented her own identification to the bank teller.
- However, the bank teller discovered the fraud and contacted the victim and the police.
- Court: Because presenting the check to be cashed with the victim's name, account number and forged signature, defendant "used" this identifying information within the meaning of the statute.

LARCENY

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Larceny of Firearm

- *Speller v. Commonwealth*: 69 Va. App. 378, (2018)
- To obtain a conviction for grand larceny of a firearm, when a value of more than $200 is not shown, the Commonwealth must prove that the item stolen was “any instrument designed, made, and intended to fire or expel a projectile by means of an explosion.”
- Sufficient if proven by circumstantial evidence.

Embezzling a Borrowed, Rented Car

- *Pittman v. Commonwealth*, 69 Va. App. 632 (2019)
- Defendant took a car that the victim rented, by asking if she could briefly borrow it for an errand.
- Defendant never returned the car, which finally showed up weeks later in an impound yard in New York, badly damaged.
- Trial court convicted defendant of embezzlement.

Court: Embezzlement Conviction Affirmed

- Court explained that there is no fiduciary or other special relationship required to prove embezzlement.
- It is sufficient as a matter of law to "wrongfully and fraudulently use, dispose of, conceal or embezzle any . . . personal property . . . which shall have been . . . delivered to him by another."
- Commonwealth sufficiently proved both a delivery of personal property from the victim to the defendant and that the defendant had the requisite fraudulent intent to convert it to her own use.

Attempted Petit Larceny – 3rd Offense

- *Coleman v. Commonwealth*, Ct. App., August 7, 2018 (Unp.)
- Court: Attempted petit larceny can be enhanced to a felony under § 18.2-104 if defendant has 2+ prior larceny convictions.
- Note: Prior attempts also count as priors for larceny.

OBSTRUCTION OF JUSTICE

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Threats & Felony Obstruction

- After Deputy Commonwealth's Attorney refused to sign off on felony assault victim's U-Visa application, defendant began harassing prosecutor.
- In 2016, defendant left message: "[H]ey stupid [DCA], why don't you listen? Why you don't come, you stupid cow, stupid cow, want me to ride it? I'm just - - - it's just cocaine motherf&%, I shoot you and your whole family you piece of shit. You going to court every day, every day, I find you my fucking self, I'm a fucking [inaudible] piece of shit."
- Defendant convicted of Felony Obstruction of Justice, where the underlying felony was the original 2009 malicious wounding offense.

Court: Threat = Obstruction

- Court agreed that the evidence was sufficient to establish that the defendant's threats to the prosecutor constituted a violation of § 18.2-460(B).
- Court: There "really can be no dispute that his threats to do her harm while she was walking to court represented "knowing[] attempts to intimidate or impede" her while she was "lawfully engaged in [her] duties . . . .", and further noted that the evidence established that his threats actually obstructed and impeded the prosecutor in the performance of her duties.

Felony Conviction Reversed

- Court: Evidence did not establish that the 2016 threats represented an attempt to obstruct or impede her regarding the prosecution of the 2009 felony case.
- For Felony Obstruction, the threat and attempted obstruction must have a direct relationship to the enumerated felony.
- *Commonwealth v. Mendez*, Ct. of App., March 12, 2019 (Pub.)

ROBBERY

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"Purse Snatching"

- *Pritchett v. Commonwealth*, Ct. of App., March 19, 2019 (Unp.)
- Defendant robbed the victim of her purse while she was sitting in her car in her own driveway.
- Victim described at trial how she "jerked down" when the defendant grabbed her arm and when the defendant pulled her arm and purse out of the car she "dropped [her] arm."
- She also indicated on cross-examination that, "When whoever opened my door, they reached in and grabbed my arm and pocketbook and was gone. It was no hesitation."

Court: Robbery Conviction Affirmed

- Court: The actions of a “purse snatcher” constitute robbery only if the perpetrator, directly or indirectly, touches or violates the victim’s person.
- In this case, the victim resisted the taking of her purse and that the perpetrator overcame that resistance by force directed at her person.
- Court emphasized the importance of resistance by the victim, and the thief’s efforts to overcome that resistance.

Attempted Robbery

- *Jones v. Commonwealth*, Ct. App., May 7, 2019 (*En Banc*)
- Officers saw a man get out of a car and then walk across the street.
- A few minutes later, they saw defendant and his accomplice get out of the same car, adjust their clothing, put on hooded sweatshirts, and then walk down an alley between two buildings in the same direction that the first man had gone.
- Officers followed the men to an alley between two residences. They saw defendant and his accomplice at the corner behind one of the houses, but not near the door.
- When the men saw the officers, they started to walk down the alley toward the street.

Officers Foil Robbery Attempt

- Officers exited their truck and announced their presence.
- Officer apprehended defendant after he tried to flee, searched his car, and discovered a ski mask in the car, and also located another ski mask in a street that the defendant had travelled before he stopped.
- Several hours later, officers searched a fenced-in area where he had seen defendant running and found a sawed-off shotgun under a bush inside the gate.
- After his arrest, defendant admitted that he and his accomplice were there to “make sure Trip didn’t get hurt.”
- According to defendant, his accomplice had intended to rob a known drug dealer.

Court: Conspiracy – Not Attempt

- Court: Defendant did not commit an overt act sufficient to constitute the commencement of the consummation of the crime of robbery, despite having the requisite criminal intent
- If no person has been subjected to force, violence or intimidation and no demand to part with personal property made, neither robbery nor attempted robbery has yet occurred
- If an act constituting any of the elements of robbery has commenced, the crime of attempted robbery has occurred even if the enterprise is abandoned or interrupted before completion.

THROWING A MISSILE

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Throwing at an Occupied Dwelling

- *Clark v. Commonwealth*, Ct. App., July 24, 2018 (Unpublished)
- Court affirmed conviction where defendant threw a piece of concrete at the victim's window, breaking it and causing injury.
- The piece of concrete hit the victim in the head
- Victim did not seek medical attention.
- Evidence was sufficient to establish that the defendant's actions may have put the victim's life in peril.

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TRAFFIC OFFENSES

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Federal Land

- *Bledsoe v. Commonwealth,* Ct. App., June 5, 2018 (Unpublished)
- § 46.2-100(ii) concerns "any property owned, leased, or controlled by the United States government and located in the Commonwealth."
- Court: The test regarding whether a way or place on federal land situated in the Commonwealth is a "highway" is whether the "way or place" is "used for purposes of vehicular travel."
- The "way or place" at issue was located on federal land, the George Washington National Forest, but based on the photographs and evidence in the record, Court found that the evidence established that the area was "used for purposes of vehicular travel."

WORTHLESS CHECK

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"Present Consideration

- *McGinnis v. Commonwealth*, 821 S.E.2d 700 (2018)
- Defendant passed several bad checks in exchange for services.
- Defendant conceded that he knew that he did not have sufficient funds in his bank accounts when he delivered the checks.
- Defendant convicted of Worthless Check.

Court: Conviction Affirmed

- Court: Larceny by worthless check is not limited to checks passed as present consideration for goods and services.
- Gravamen of the offense is the intent to defraud.
- Regardless of the object of the payment, the burden on the Commonwealth is to establish that the defendant knew or had reason to know that the check was worthless because there were insufficient funds in his bank account at the time the check was passed and, that in passing the check, he intended to defraud the receiver.

PART FOUR: POLICE USE OF FORCE

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Deadly Force Against Suicidal Person

- *Wilson v. Prince George's County*, 893 F.3d 213 (2018)
- Officer responded to a 911 call reporting that Wilson had kicked in the door of his former girlfriend's residence and attacked her.
- Victim escaped & Wilson armed himself with a pocket knife with the intention of taking his own life.
- When the officer arrived, the girlfriend directed him to Wilson, who was standing outside.
- When the officer confronted Wilson, Wilson pulled out the knife.

Shooting

- The officer repeatedly ordered Wilson to drop the knife, but the defendant refused.
- Instead, Wilson began walking towards the officer and started to stab himself in the chest and cut his own throat.
- When he got close to the officer (the parties dispute whether the distance was 20 feet or 10 feet), the officer shot Wilson, who survived and sued for violation of his 4th Amendment rights.

Court:

- Court: Officer violated the Fourth Amendment by using deadly force against someone who posed no immediate threat to the officer and no threat to others.
- Court found that the violation was not sufficiently established at the time of the shooting to justify a finding of liability.
- “We emphasize, however, that as of the date this opinion issues, law enforcement officers are now on notice that such conduct constitutes excessive force in violation of the Fourth Amendment.”

Thank you for your service!

Questions?

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