

COURT OF APPEALS OF VIRGINIA

Present: Judges Felton, Kelsey and Senior Judge Willis  
Argued at Richmond, Virginia

STEVEN CRESPO

v. Record No. 2045-02-2

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JERE M. H. WILLIS, JR.  
JUNE 3, 2003

FROM THE CIRCUIT COURT OF THE CITY OF HOPEWELL  
James A. Luke, Judge

Stephen L. Hewlett for appellant.

Amy Hay Schwab, Assistant Attorney General  
(Jerry W. Kilgore, Attorney General, on  
brief), for appellee.

On appeal from his conviction as a principal in the second degree of malicious wounding and use of a firearm in the commission of a felony, Steven Crespo contends that the evidence was insufficient to support his convictions and argues that the Commonwealth's evidence failed to "exclude every reasonable hypothesis except that of guilty, and that it is not inconsistent with his innocence." We affirm the judgment of the trial court.

"On appeal, 'we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom.'" Archer v. Commonwealth, 26 Va. App. 1, 11, 492 S.E.2d 826, 831 (1997)

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

(citation omitted). "The credibility of the witnesses and the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear that evidence as it is presented." Sandoval v. Commonwealth, 20 Va. App. 133, 138, 455 S.E.2d 730, 732 (1995). "The judgment of a trial court sitting without a jury is entitled to the same weight as a jury verdict and will not be set aside unless it appears from the evidence that the judgment is plainly wrong or without evidence to support it." Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987).

As Alan Rufus and Chris Thorsen left a house to get into their car, Rufus saw three or four men who were "[p]robably African American" standing around the corner. They were armed with a handgun and a shotgun. One of the men approached Rufus, put his arm around Rufus's shoulder, and demanded money. After the man "put a gun to" Rufus, Rufus gave him his wallet. The man said, "I know you have something else." When Rufus denied having anything else, the man hit Rufus in the head, causing an injury that required thirteen stitches. As Rufus "scrunched up" under the car, he heard gunshots.

Detective George Burgess investigated the incident. Based on the evidence he collected, Burgess developed a list of suspects, one of whom was Larry Starks. Following an unrelated incident, a shotgun was recovered. Based on results from

testing this shotgun, Starks was charged with assaulting and robbing Rufus.

During the course of Starks's prosecution, the Commonwealth's Attorney provided a copy of a letter Crespo had written to Starks. In this seven-page letter, which was admitted into evidence in Starks's trial, Crespo wrote:

Now about this case, I know it's hard for you and all and your [sic] worried and don't know what to do. You say you want to snitch, I can't tell you what to do but if you think and listen to what I say you will see I'm trying to help you out. I'm going to tell you like this if you do turn us in you know you will have to testify against us. Then what you going to say either that you were with us but you were just driving the car, and you'll still get in trouble because you suppose to report any crime that you seen or no [sic] about to the police or you can get a charge for that (go to the law library) and also for lying to the police because then who was driving the car plus there [sic] going to ask you all types of questions like how you know this and that why you ended up w/the gun and if it was your [sic] how did we get it. Regardless if you snitch or not I'm not going to snitch on you about your driving the car and being part of it because I want to see you go home plus snitching ain't me my dad taught [sic] me that. . . . [R]emember even thou [sic] you weren't at the actual scene you were part of it we were all together you were just driving the car. I take blame and responsibility for my actions. I know what I did and that this is part my fault but realize that I got almost the same blame as you, just a little more, we were all in it together, I just went and did more but remember that I didn't do the smacking with

the gun or the shooting the car. I didn't do nothing to get us cought [sic]. . . .

I know we did [f---] up we should help pay your lawyer or get a better lawyer, I ain't got no excuse for that; I don't blame you for hating me for that even tho [sic] I put money in your books it weren't [sic] much but it still don't make up for that. . . .

I know that after words [sic] we could blame it on Chris and get away w/it but after you put it on us you have to tell the truth to get us found guilty or the Commonwealth won't let you get away plus by getting them charged I'll get kicked out of this program and if I do beat the charges I'll have to start my time all over. This is what I think you should do and say . . . . First the main idea is for all of us to go home and not have to do time for this. So put it on Chris. Just say you had lent the car to Chris that night and the only reason you did was because he had a license. You had your car, me you and Will were together ya'll dropped me off at Keosha house and ya'll were planing [sic] on going to Richmond but when ya'll stopped at your Grandma's house ya'll decided to stay since alot [sic] of your family was there and they were playing card [sic] and having a good time. When you had lent the Stanza to Chris you must of [sic] left the hat in the car. (That's two of the evidence). The next day Chris brought you the car back but he ain't never tell you what happened (you didn't know nothing about it, but you had a feeling when they towed the car and talked to us about it). A couple of day's [sic] later Chris asked you to hold the gun after him he put it under your seat himself, then Chris got killed and you got stuck w/the gun, you had forgot about it and got cought [sic] w/it (That's the other two evidence).

This way Will and I don't have to be mentioned as doing it and since you didn't

know nothing about it that's less questions and more hope (Chris is dead plus he is already known for robbery), also get as many of your people to be witnesses to say that you and Will were at your Grandma's house all night till the next morning (that will help alot)[sic] . . . .

P.SS . . . First you messed up telling your lawyer the truth because at first he said you were ok [sic] and that they didn't have enough evidence and that you had a very good chance of beaten [sic] the charges and now it's the total opposite. He probably went and told the police that's why they said you couldn't beat it to convince you to snitch (to scare you).

Detective Burgess took this letter and visited Crespo at Riverside Jail. He advised Crespo of his Miranda rights. When Burgess said he wanted to talk about Starks and the robbery, Crespo said, "I know what you are talking about, yes." Burgess took two statements from Crespo before showing him the letter. After Crespo's first statement, Burgess suggested that Starks had provided a different story, that Starks claimed to have been at his grandmother's house. Crespo then gave another statement, adding that Starks had been at his grandmother's and explained the presence of a hat that had been collected as evidence. When Burgess then showed Crespo the letter, Crespo "was kind of taken back . . . and after a moment or so" admitted that he had written the letter. Burgess referred to the robbery when he asked Crespo about the letter.

At trial, Crespo admitted being present during the robbery, but claimed he was "staying outside the car" and "went down the street." He claimed he did not know the robbery was occurring, and only learned of the robbery when the police talked to him later that day. He admitted writing the letter after talking to the police. He admitted it was his idea to "blame Chris" for everything. He also admitted his statement that if Starks testified truthfully, he (Crespo) would be found guilty, and that he wrote the letter to help Starks and himself. He testified that he did not intend to implicate himself in robbery, malicious wounding, or firearm charges when he wrote the letter to Starks. He asserted that he is not African-American.

The trial court, sitting as fact finder, believed the Commonwealth's evidence and rejected portions of Crespo's evidence. It found that the Commonwealth had proved beyond a reasonable doubt that, as a principal in the second degree, Crespo committed malicious wounding and used a firearm in the commission of a felony. This finding is supported by direct evidence that proved Crespo's guilt beyond a reasonable doubt. "[W]hether the Commonwealth relies upon either direct or circumstantial evidence, it is not required to disprove every conceivable possibility of innocence, but is, instead, required only to establish guilt of the accused to the exclusion of a

reasonable doubt." Saunders v. Commonwealth, 18 Va. App. 825, 829, 447 S.E.2d 526, 529 (1994).

Direct evidence proved that someone took Rufus's wallet from him at gunpoint and hit him on the head, inflicting an injury that required thirteen stitches. Direct evidence proved that these acts were done by one from a group of three or four men who were "probably" African-American. Although Crespo denied being African-American, his race is listed on his arrest warrant as "H," which presumably denotes Hispanic. No evidence refuted his perception as African-American. When Burgess went to the jail and told Crespo he wanted to talk to him about Starks and the robbery, Crespo said, "I know what you are talking about, yes." He admitted writing the incriminating letter to Starks. He admitted being present during the robbery, claiming only that he was "outside the car" and was "down the street." He admitted that it was his idea to blame Chris for everything, and admitted that he wrote that if Starks testified truthfully, he (Crespo) would be found guilty. This evidence was sufficient to establish Crespo's guilt beyond a reasonable doubt.

The judgment of the trial court is affirmed.

Affirmed.