VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 20th day of July, 2017.

Donald Wayne Sly, Appellant,

against Record No. 160424
Court of Appeals No. 1129-15-2

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

The trial court convicted Donald Wayne Sly of involuntary manslaughter under Code § 18.2-36. Challenging the sufficiency of the evidence, Sly unsuccessfully appealed to the Court of Appeals. He now appeals to us, arguing that the trial court and the Court of Appeals erroneously found the evidence sufficient. We disagree and affirm.

I.

"On appeal, we review the evidence in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Vasquez v. Commonwealth*, 291 Va. 232, 236, 781 S.E.2d 920, 922 (citation omitted), *cert. denied*, ___ U.S. ___, 137 S. Ct. 568 (2016). "Viewing the record through this evidentiary prism requires us to 'discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom.'" *Bowman v. Commonwealth*, 290 Va. 492, 494, 777 S.E.2d 851, 853 (2015) (quoting *Kelley v. Commonwealth*, 289 Va. 463, 467-68, 771 S.E.2d 672, 674 (2015)).[1]

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[1] We thus may rely upon any reasonable inferences that can be discerned from the record in support of the trial court's decision. *See, e.g.*, *Du v. Commonwealth*, 292 Va. 555, 566, 790 S.E.2d 493, 500 (2016); *Haynes v. Haggerty*, 291 Va. 301, 305, 784 S.E.2d 293, 294-95 (2016). "[O]ur appellate review 'is not limited to the evidence mentioned by a party in trial argument or by the trial court in its ruling.'" *Du*, 292 Va. at 566, 790 S.E.2d at 500 (citation omitted); *see also Perry v. Commonwealth*, 280 Va. 572, 580, 701 S.E.2d 431, 436 (2010); *Bolden v.*

So viewed, the evidence at trial showed that on July 20, 2013, Chris Neagle was driving a sedan on Route 15, a two-lane road running through Fluvanna County, accompanied by his wife on their way to visit friends. It was a sunny day with clear visibility. Pictures of the area show several residential driveways on both sides of the road, marked by mailboxes. Neagle put on his left turn signal, slowed down to make the left turn, and began turning into a driveway. At that moment, an 18-wheel tractor trailer driven by Sly broadsided the sedan, killing Neagle and badly injuring his wife. The impact occurred in the oncoming-traffic lane, with the tractor trailer hitting the sedan on the driver's side. Sly's tractor trailer was fully loaded with slate and weighed 77,900 pounds.

A man mowing grass nearby witnessed the accident. He saw the sedan traveling "very, very slow" and saw the car's left turn signal flash two or three times before making the left turn. J.A. at 53-54. The man, a former EMT trauma technician, saw Sly's tractor trailer and estimated that it was traveling approximately 60 miles an hour. *Id.* at 61.[2] He then observed the tractor trailer attempt to "slingshot" around the sedan on the left side. *Id.* at 55. The tractor trailer made a "long blow" of its "[a]ir horn," *id.* at 64, and did not appear to "decelerate at all," *id.* at 61.

A woman driving a vehicle behind Sly's tractor trailer also witnessed the accident. She saw the tractor trailer "quickly veer to the left" immediately before the collision. *Id.* at 76. She described the movement as "very quick" and "very fast." *Id.* At that point, she "hit [her] brakes," *id.* at 85, and saw the tractor trailer go into the ditch, *id.* at 76. After driving past the tractor trailer, she saw the crushed sedan and pulled into a driveway to call for help.

Commonwealth, 275 Va. 144, 147, 654 S.E.2d 584, 586 (2008); *Commonwealth v. Jenkins*, 255 Va. 516, 521-22, 499 S.E.2d 263, 265-66 (1998).

[2] A reconstruction expert testifying for Sly estimated the tractor trailer's speed at 55 miles per hour 5 seconds before impact and 45 miles per hour 2 seconds before impact. The expert conceded, however, that these figures were based solely on Sly's version of events and not on any "physical evidence." *See* J.A. at 287-89 ("That was based upon the . . . statement that I read from the driver, that being Mr. Sly, that he had slowed to forty-five (45). Again, that's not physical evidence, that's testimony."). As factfinder, the trial court was not required to credit the expert's opinion that was based entirely on Sly's self-serving statement. *See Jones v. Commonwealth*, 279 Va. 295, 300, 687 S.E.2d 738, 740 (2010) (noting that "the fact finder was entitled to discount [the defendant's] self-serving statements or view them as an effort to conceal his guilt" (citing *Shackleford v. Commonwealth*, 262 Va. 196, 209, 547 S.E.2d 899, 907 (2001))).

At the scene of the accident, Sly gave a written statement to an investigating officer. In it, Sly said that he

> saw the car stopped on [the] road way talking with [a] man with [a] push mower. I la[i]d on my air horn [and] was doing about 45 MPH[.] I tr[i]ed to go around then the car turned in front of me[.] I tried to stop! [B]ut [I] hit the car[.] I did not see any other cars around[.]

Id. at 360. Sly also admitted to the officer that he was talking on his cell phone with "ear buds" in both ears "while he was driving." *Id.* at 158.

A state trooper with specialized training in accident-reconstruction techniques testified as an expert witness for the Commonwealth. He participated in the investigation of the crash site and obtained the sedan's "air-back control module" that records crash data. *Id.* at 210. From his on-site measurements and review of the crash data, he found that Sly's tractor trailer had pushed the sedan sideways a distance of 93 to 95 feet from the point of impact. *See id.* at 218-20, 401. The only pre-collision skid marks attributable to the tractor trailer began 14.1 feet before impact. *See id.* at 220-21. The expert opined that the physical characteristics of the skid marks were "more" consistent with skidding trailer tires rather than tractor tires. *Id.* at 221-22.

The Commonwealth's expert calculated that the accident occurred 51.7 feet after Sly's passing lane had ended. *See id.* at 216-17, 399. At the time of the collision, the sedan had been traveling 7.7 miles per hour and only 15.8 miles per hour 5 seconds earlier. *See id.* at 225, 407. The tractor trailer had been traveling at least 37.19 miles per hour *after* impact. *See id.* at 227, 240. The expert also measured Sly's ability to see the sedan prior to the collision. The distance from the place of impact to the place where that site could first be seen was 911 feet, *see id.* at 212, more than the length of three football fields.

While in jail, Sly called his girlfriend and stated: "I know. I should have just stayed back and actually slowed the f**k down and stayed behind the mother-f****r. I should have just stayed way back, and just, you know, I shouldn't have tried to go around the mother-f****r. No, I couldn't have done that, no, f**k no I couldn't have done that, I just had to — had to go around him, no, f**k no . . . ." Audio Recording at 1:54 to 2:10 (Commonwealth's Ex. 44).

Sitting as factfinder, the trial court found that Sly made a "conscious maneuver, blowing his horn and telling the person in the [sedan] to get out of his way" while he "went into the other lane in a slingshot maneuver." J.A. at 339. The court held that Sly's actions showed a "total

disregard for human life." *Id.* Because Sly's criminal negligence caused Neagle's death, the court convicted Sly of involuntary manslaughter under Code § 18.2-36. Sly appealed to the Court of Appeals, which denied his petition for appeal. Sly now appeals to us.

II.

Sly first contends that the Court of Appeals erred in denying his petition for appeal because the trial court employed an improper standard for criminal negligence, which tainted the trial court's finding that the evidence was sufficient. We disagree.

"Absent clear evidence to the contrary in the record, the judgment of a trial court comes to us on appeal with a presumption that the law was correctly applied to the facts." *Yarborough v. Commonwealth*, 217 Va. 971, 978, 234 S.E.2d 286, 291 (1977). Given that presumption, "we have cautioned against taking a court's ruling out of context by focusing on one isolated phrase." *Funkhouser v. Ford Motor Co.*, 285 Va. 272, 283 n.4, 736 S.E.2d 309, 315 n.4 (2013). "[W]e will not fix upon isolated statements of the trial judge taken out of the full context in which they were made, and use them as a predicate for holding the law has been misapplied." *Yarborough*, 217 Va. at 978, 234 S.E.2d at 291.

The law governing involuntary manslaughter is well settled in Virginia. "[I]nvoluntary manslaughter in the operation of a motor vehicle" involves an "accidental killing which, although unintended, is the proximate result of negligence so gross, wanton, and culpable as to show a reckless disregard of human life." *King v. Commonwealth*, 217 Va. 601, 607, 231 S.E.2d 312, 316 (1977). "The negligence must be of such reckless, wanton or flagrant nature as to indicate a callous disregard for human life and of the probable consequences of the act." *Lewis v. Commonwealth*, 211 Va. 684, 687, 179 S.E.2d 506, 509 (1971). *See generally* 7 Ronald J. Bacigal, Virginia Practice Series: Criminal Offenses and Defenses 369-71 (2016-2017 ed.); John L. Costello, Virginia Criminal Law and Procedure § 3.7[2], at 81-83 (4th ed. 2008 & Supp. 2016).

Sly contends that the trial court misunderstood the definition of criminal negligence and found that "driving a fully-loaded tractor-trailer was such an inherently dangerous activity that it need only be coupled with ordinary negligence to constitute criminal negligence." Appellant's Br. at 7. He bases this conclusion on the trial court's emphasis of "the size and weight of the truck" and its statement from the bench that Sly "needed to use a different standard of care." *Id.*

at 11-12 (quoting J.A. at 338). The full context of the trial court's remarks, however, demonstrates that the court was merely recognizing what should be obvious — that the *specific circumstances* surrounding a defendant's act bear heavily on whether the act shows "a reckless disregard of human life," *King*, 217 Va. at 607, 231 S.E.2d at 316, and "of the probable consequences of the act," *Lewis*, 211 Va. at 687, 179 S.E.2d at 509.

Contrary to Sly's view, the practical difference between civil and criminal negligence is more a matter of degree than of kind. In the context of criminally negligent homicide,

> the "measuring stick" is the same in a criminal case as in the law of torts. It is the exercise of due care and caution as represented by the conduct of a reasonable person under *like circumstances*, and this in itself is intended to represent the same requirement whatever the case may be. But whereas the civil law requires conformity to this standard, a very substantial deviation is essential to criminal guilt.

Rollin M. Perkins & Ronald N. Boyce, Criminal Law 843 (3d ed. 1982) (emphasis added). In this respect, the "like circumstances" concept merely takes into account the uniqueness of "the actor's situation." *Id.* at 105, 107 (quoting Model Penal Code § 2.02(2)(d), at 226 (1985)).[3]

In a vehicular manslaughter case, therefore, common sense confirms that a factfinder's consideration of the totality of circumstances should take into account the size, weight, and maneuverability of the defendant's vehicle. Such conditions may have a direct bearing on the gravity of the risks that the defendant should have anticipated and the degree of his deviation from the reasonable-man standard of care. As we explained in another involuntary manslaughter case involving a tractor trailer:

> It is a matter of common knowledge that these long, high, wide and heavy trailers attached to motor vehicles, equipped with extra power, traversing the highways, create extra danger to other users thereof. "Their length and weight, accompanied by extra power, vests them with extra force, but should not vest them with extra privilege. It is particularly true, when changing the course of the tractor to right or left, that it is most difficult to calculate with

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[3] *See also Tubman v. Commonwealth*, 3 Va. App. 267, 271, 348 S.E.2d 871, 873 (1986) ("Willful and wanton negligence is acting consciously in disregard of another person's rights or acting with reckless indifference to the consequences, with the defendant aware, *from his knowledge of the circumstances and conditions*, that his conduct probably would cause injury to another." (emphasis added) (quoting *Griffin v. Shively*, 227 Va. 317, 321, 315 S.E.2d 210, 213 (1984))).

> exactitude the effect upon the trailer, and this very fact . . . requires greater precaution" for the safety of others.

Richardson v. Commonwealth, 192 Va. 55, 59, 63 S.E.2d 731, 733 (1951) (alteration in original) (citation omitted).

For these reasons, the trial court in this case did not analyze the sufficiency of the evidence under an incorrect legal standard. Sitting as factfinder, the trial court found that Sly's "conscious maneuver" to "slingshot" around the sedan demonstrated a "*total* disregard for human life," J.A. at 339 (emphasis added) — a higher degree of culpability than a "*reckless* disregard of human life," *King*, 217 Va. at 607, 231 S.E.2d at 316 (emphasis added). The trial court's total-disregard standard cannot be reasonably deemed, as Sly contends, to mean that driving a tractor trailer — with its capacity for great harm and its relative lack of maneuverability or swift stopping capability — "need only be coupled with ordinary negligence to constitute criminal negligence," Appellant's Br. at 7. All that the trial court observed, as the Court of Appeals correctly stated in its per curiam order, was that "the nature of the instrumentality is relevant to the determination of whether the defendant exhibited a reckless disregard for human life. In other words, it is easier to endanger human life when handling a dangerous item like a firearm or a tractor trailer." *Sly v. Commonwealth*, Record No. 1129-15-2, slip op. at 2 (Nov. 4, 2015).[4]

III.

Sly next challenges the sufficiency of the evidence to support his conviction for involuntary manslaughter. We find no merit in this challenge.

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[4] On appeal, Sly relies heavily on *Elliott v. Carter*, 292 Va. 618, 791 S.E.2d 730 (2016), in which we affirmed a trial court's grant of a motion for summary judgment on a civil claim alleging gross negligence. Four uncontested facts in *Elliott* established that the "claim of gross negligence must fail as a matter of law" because these facts collectively established "that the defendant exercised some degree of diligence and care." *Id.* at 623, 791 S.E.2d at 733. Citing *Elliott* as analogous support, Sly argues that his single "act of blowing his horn" showed enough diligence and care to *require* "the trial court to find that criminal negligence had not been proved." Appellant's Br. at 16. We disagree. The trial court in this case interpreted Sly's single alleged act of diligence and care — a horn blast from his fast-advancing tractor trailer — as little more than a threatening demand to the sedan "to get out of his way" or else risk injury or death as Sly deliberately engaged in a dangerous "slingshot maneuver." J.A. at 339. The only question for us is whether a rational factfinder could have drawn this inference from the evidence. We hold that the inference is fully supported by the totality of the circumstances.

"[W]e review factfinding with the highest degree of appellate deference." *Bowman*, 290 Va. at 496, 777 S.E.2d at 854. In a challenge to the sufficiency of the evidence in a criminal case, "an appellate court does not 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Vasquez*, 291 Va. at 248, 781 S.E.2d at 929 (alteration omitted) (emphasis in original) (quoting *Williams v. Commonwealth*, 278 Va. 190, 193, 677 S.E.2d 280, 282 (2009)). Instead, the "relevant question is whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* (emphasis in original) (citation omitted). This deferential appellate standard "applies not only to findings of fact, but also to any reasonable and justified inferences the fact-finder may have drawn from the facts proved." *Sullivan v. Commonwealth*, 280 Va. 672, 676, 701 S.E.2d 61, 63-64 (2010). These principles apply "with equal force" to bench trials as they do to jury trials. *Cobb v. Commonwealth*, 152 Va. 941, 953, 146 S.E. 270, 274 (1929).[5]

The evidence presented at trial demonstrated that Sly was driving a heavily loaded tractor trailer behind a sedan that was either "stopped," as Sly initially stated, J.A. at 360, or driving "very, very slow," as one witness testified, *id.* at 53, on a two-lane highway flanked on both sides by residential driveways. The sedan, with its turn signal flashing, was in the process of turning left into a residential driveway. Sly had unobstructed sight of the vehicle for at least 911 feet, but instead of slowing down or stopping altogether, he quickly veered the 77,900-pound tractor trailer into the oncoming-traffic lane to pass the car in a "slingshot" maneuver, sounding his horn. *Id.* at 55. An eyewitness testified that Sly did not "decelerate at all." *Id.* at 61. We agree with the Court of Appeals that the

> trial court was entitled to credit eyewitness testimony that the "slingshot" passing maneuver [Sly] employed was "not a well thought out decision," but rather "a conscious maneuver, blowing his horn and telling the [victim] to get out of his way." The trial

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[5] Also, in a sufficiency-of-the-evidence challenge, "an appellate court has a 'duty to discard' contested evidence presented by the accused and to 'regard as true' all credible evidence favorable to the prosecution." *Bowman*, 290 Va. at 500 n.8, 777 S.E.2d at 857 n.8 (quoting *Wright v. Commonwealth*, 196 Va. 132, 137, 82 S.E.2d 603, 606 (1954)). Therefore, "when 'faced with a record of historical facts that supports conflicting inferences,' a court reviewing the sufficiency of the evidence 'must presume — even if it does not affirmatively appear in the record — that the trier of fact resolved any such conflicts in favor of the prosecution,'" and the appellate court "must defer to that resolution." *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)); *see also Wright v. West*, 505 U.S. 277, 296-97 (1992) (plurality opinion).

> court resolved the factual question of whether the horn blast was a precautionary warning or an aggressive communication against [Sly]. It was also entitled to find that [Sly] should have known of the risk that the victim would attempt to turn when the victim's vehicle was traveling so slowly. The accident occurred as [Sly] tried to pass in a no pass zone. The trial court's decision was not plainly wrong. [Sly]'s sudden maneuver against this backdrop evinced a reckless indifference to the life of others.

Sly, slip op. at 4 (second alteration in original).

In *Richardson*, we upheld a conviction for involuntary manslaughter under analogous circumstances. The defendant, driving a tractor trailer, attempted to pass another tractor trailer despite seeing a pedestrian walking along the left gravel shoulder within three feet of the road. *See Richardson*, 192 Va. at 57, 63 S.E.2d at 732. "Defendant, in utter disregard of the rights of the pedestrian, drove his truck to the wrong side of the road, off the hard-surface, and struck him from behind." *Id.* at 58, 63 S.E.2d at 733. In upholding the conviction, we stated,

> On a narrow road, traveling at a high speed, defendant attempted to drive the vehicle described in such [a] manner as would necessarily require him to pass within 2 feet of a pedestrian who was apparently oblivious of the approaching danger and walking on the shoulder where he had a right to be. Defendant knew, or should have known (1) that when he changed the course of his tractor he could not "calculate with exactitude" how far the trailer would swing or swerve over and upon the north shoulder, and (2) that injury to [the victim] was not improbable. The evidence fully justified the jury in finding defendant guilty of such reckless, wanton and flagrant negligence as to evince an utter disregard for the safety of others and under circumstances likely to cause injury.

Id. at 59, 63 S.E.2d at 733.

What was true in *Richardson* is also true here. A rational factfinder could conclude beyond a reasonable doubt that Sly's "accidental killing" of Neagle, "although unintended," was "the proximate result of negligence so gross, wanton, and culpable as to show a reckless disregard of human life." *King*, 217 Va. at 607, 231 S.E.2d at 316. Sly's argument to the contrary fails to appreciate that, "[a]s we have said on many occasions, '[i]f there is evidence to support the convictions, the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" *Bowman*, 290 Va. at 496 n.3, 777 S.E.2d at 854 n.3 (quoting *Courtney v. Commonwealth*, 281

Va. 363, 368, 706 S.E.2d 344, 347 (2011)).[6] To be sure, "disagreements among jurors or judges do not themselves create a reasonable doubt of guilt" because the fact that "rational men disagree is not in itself equivalent to a failure of proof by the State, nor does it indicate infidelity to the reasonable-doubt standard." *Tibbs v. Florida*, 457 U.S. 31, 42 n.17 (1982) (alteration in original) (citation omitted).

IV.

The Court of Appeals did not err in denying Sly's petition for appeal. The appellant shall pay to the appellee two hundred and fifty dollars damages.

Justice McCullough took no part in the consideration of this case.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Fluvanna County.

A Copy,

Teste:

Patricia L Harrington

Clerk

[6] *See also Cobb*, 152 Va. at 953, 146 S.E. at 274 ("[I]t is not for this court to say that the evidence does or does not establish his guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion.").