VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 2nd day of May, 2019.

Present: All the Justices

George A. Gapanovitch, Appellant,

against Record No. 171707
Circuit Court No. CL15-2344

Quinn E. Hazelwood, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Richmond.

Appellant, George A. Gapanovitch, challenges, relative to the award of damages, the judgment of the circuit court sustaining the jury verdict in favor of appellee, Quinn E. Hazelwood, in Hazelwood's personal injury action against him. Gapanovitch argues that the circuit court erred in admitting at trial Hazelwood's evidence offered in support of claims that his damages resulting from the physical altercation at issue included that he was (i) "arrested, spent time in jail, was required to post bond, and retain an attorney to defend him[self] on the resulting criminal charges," and (ii) "evicted from his apartment and was not able to rent an apartment in his own name."*

Upon consideration of the record, briefs, and argument of counsel, the Court holds that the circuit court erred in admitting the above-referenced evidence of damages because we conclude that Gapanovitch's assault and battery upon Hazelwood was not a proximate cause of any such damages suffered by Hazelwood. *See Corbett v. Clarke*, 187 Va. 222, 225 (1948) ("[W]hen a person violates a duty imposed upon him by common law, it is just and reasonable to hold him liable to every person injured whose injury is the natural and probable consequence of

* At the time of Gapanovitch's and his accomplice's subject assault and battery upon him, Hazelwood, acting in self-defense, shot both Gapanovitch and his accomplice (who died from his gunshot wounds). That altercation occurred in a hallway leading to Hazelwood's apartment after Gapanovitch and his accomplice argued with Hazelwood outside in the street and then pursued Hazelwood into his apartment building.

his misconduct, *if* the injury is of a character likely to follow and which, under ordinary circumstances, might reasonably have been anticipated from the wrongful act. The damage is [thus] not too remote *if* according to the usual experience of mankind the result was to be expected.") (citation and internal quotation marks omitted; emphasis added); *Wyatt v. Chesapeake & Potomac Tel. Co.*, 158 Va. 470, 479–80 (1932) (explaining that a tortfeasor's wrongful act "carries with it liability for consequences which, in the light of attendant circumstances, could reasonably have been anticipated by a prudent man, but not for casualties which, though possible, were wholly improbable"; and thus "[o]ne is not charged with foreseeing that which could not be expected to happen"); *see also Quisenberry v. Huntington Ingalls Inc.*, 296 Va. 233, 252 (2018) (quoting *Wyatt*).

Accordingly, we reverse the circuit court's judgment sustaining the jury's verdict only insofar as it fixed the amount of damages and remand the case for a new trial, consistent with this order, limited to the issue of damages.

This order shall be certified to the Circuit Court of the City of Richmond.

JUSTICE McCLANAHAN, with whom CHIEF JUSTICE LEMONS and JUSTICE POWELL join, dissenting.

The "concept" of proximate cause, though a fundamental component of tort law, is "difficult to define and almost impossible to explain conclusively," *Huffman v. Sorenson*, 194 Va. 932, 937 (1953), as evidenced by its articulation in *Corbett* and *Wyatt*. Consequently, "[e]ach case necessarily must be decided upon its own facts and circumstances." *Huffman*, 194 Va. at 937.

Here, the question is whether Hazelwood's disputed damages, in the form of his arrest and criminal charges, and his eviction from his apartment—which would not have occurred but for the assault and battery committed upon him by Gapanovich and his accomplice—were or were not "wholly improbable." *Wyatt*, 158 Va. at 479-80. Only if this Court can say that upon the facts of this case these damages were "susceptible of but one inference" in terms of their probability or improbability does the question of proximate cause become "one of law for the court" to decide. *Huffman*, 194 Va. at 937 (citations omitted); *see Griffin v. Shively*, 227 Va. 317, 320 (1984) (explaining that the issue of proximate cause "only become[s] [a] question[] of

law to be determined by a court, when reasonable minds could not differ") (citations omitted); *Danville & W. Ry. Co. v. Chattin*, 192 Va. 216, 222 (1951) ("Only when reasonable men should not disagree on the proper inferences to be drawn from the facts proved is it a question of law." (citations omitted)).

Unlike the majority, I believe reasonable minds can disagree as to whether a prudent person would anticipate that Hazelwood might indeed sustain the disputed damages in light of the attendant circumstances. Therefore, in my opinion, it was for the jury in this case to decide whether Gapanovitch's intentional tortious acts were a proximate cause of such damages. *See Griffin,* 227 Va. at 320 (explaining that, generally, proximate cause is an issue "for a jury's resolution"); *Jordan v. Jordan*, 220 Va. 160, 162 (1979) ("[P]roximate cause [is] ordinarily [a] question[] for the jury." (citations omitted)); *Huffman*, 194 Va. at 936-37 ("The question of proximate cause is generally for the determination of the jury . . . ." (citing *Danville & W. Ry.*, 192 Va. at 222)).

For these reasons, I would affirm the judgment of the trial court in upholding the jury's verdict, and thus dissent.

A Copy,

Teste:

Clerk