

# Tomlin v. Commonwealth

*Tomlin v. Commonwealth* was decided on June 29, 2023 by the Virginia Supreme Court Defendant appeals her convictions for Abusing or Neglecting an Incapacitated Adult.

## **Issue:**

Whether the victim's injuries amounted to serious bodily injuries for Abuse/Neglect of an Incapacitated Adult?

## **Facts:**

The defendant abused and neglected her mother, the victim. For some time, the defendant had refused offers of assistance from the local social services department to take help care of her mother. After a maintenance worker discovered the victim lying on the floor, covered in bed bugs, and requiring medical attention, he called 911. Firefighters responded and found the victim in horrifying condition [the details are truly horrifying and will not be detailed in full here – EJC]. The defendant told rescue workers that the victim had been on the floor since a fall two days before. The defendant stated that she had not assisted her and instead left her in her own filth for two days without any treatment or cleaning because she “did not have time.” Doctors who examined the victim determined that her bed sores presented a risk of death significant enough to make them a life-threatening condition. Her condition was life-threatening because of the combination of bed sores, leg sores, and the increased risk of infection created by the ubiquitous bed bugs, feces, and urine covering her body. At trial, the defendant argued that the victim had not suffered “serious bodily injuries.” After the victim entered the hospital, the defendant took the victim's money to live in a hotel and pay for various expenses, without the victim's consent. The victim died in hospice care a couple of months later. At trial, the Commonwealth did not offer testimony directly bearing on her mental capacity from the time she was admitted to the hospital to the time of her death approximately two months later. The trial court based its decision about her inability to understand financial matters on evidence of her inability to understand her healthcare needs. The Court of Appeals reversed and dismissed the conviction with respect to the conviction for financial exploitation of a mentally incapacitated adult but affirmed the conviction for abuse or neglect of an incapacitated adult. The Court of Appeals found that the trial court lacked sufficient evidence to conclude that the victim was mentally incapacitated with respect to financial matters. However, the Court of Appeals also found that the trial court had sufficient evidence to conclude that the victim had suffered “serious bodily injuries.”

## **Holding:**

Conviction for Abuse and Neglect Affirmed. The Court held that the trial court could have rationally determined that the defendant's abuse and neglect of the victim caused her to suffer a “serious bodily injury” under § 18.2-369. The Court explicitly refused to find a singular, comprehensive definition of “serious bodily injury” to apply to § 18.2-369(C). The Court explained that “it would make no sense to treat this phrase as a technical term of art that must be understood ‘according to the acceptance of the learned in [the pertinent] art, trade, and science.’” Instead, the Court said that when a statute uses the term “serious” but does not define it, the Court uses common-sense meanings. To illustrate such meanings, the Court cited three dictionary definitions of “serious”: First, “having important or dangerous possible consequences” as in “a serious injury.” (Merriam-Webster Online Dictionary). Next, as “attended with danger” and “giving cause for anxiety,” as in a “serious illness” or “condition.” (Oxford English Dictionary). Lastly, “to cause considerable distress, anxiety, or inconvenience: attended with danger” as in “a serious injury.” (Webster's)

**Bottom Line:**

The Court rejected the defendant's argument that bedsores do not qualify as "serious bodily injury" under § 18.2-369(C) because that code section provides an exhaustive list of serious injuries and diseases and bedsores do not appear on the list. The Court found that the phrase "include but not be limited to" merely provides a non-exhaustive, illustrative list of meanings. The Court also rejected the defendant's argument that serious bodily injury under § 18.2-369 must necessarily be one posing a substantial risk of death.

Full Case at: <https://www.vacourts.gov/opinions/opnscvwp/1220223.pdf>