

COURT OF APPEALS OF VIRGINIA

Record No. 0098-25-1

VERNON LORENZO GAY
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, White and Duffan

Argued at Norfolk, Virginia

Opinion Issued September 15, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

Jamilah D. LeCruise, Judge

Harry Dennis Harmon, Jr., for appellant.

Brooke I. Hettig, Assistant Attorney General (Jason S. Miyares,¹ Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE RANDOLPH A. BEALES

Following a jury trial, Vernon Lorenzo Gay was convicted of rape and statutory burglary. On appeal, Gay alleges that the evidence was insufficient to support his convictions.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

BACKGROUND²

In 1992, E.K.³ lived in an apartment building in Norfolk with her three children, who were four years old, one year old, and two months old. E.K.'s one-year-old daughter slept in the bed with her and her two-month-old son slept in a crib beside her bed. E.K.'s four-year-old son, I.K., slept in his own room, so E.K. left the bathroom light on at night for him. E.K.'s home had two entrances, which she normally kept locked. I.K.'s bedroom had a window, which E.K. usually kept locked, but E.K. testified that the locking mechanism on I.K.'s bedroom window was "very bad" and could be opened even when it appeared to be locked. Her apartment and I.K.'s bedroom were on the ground floor of the building.

In the late night of May 4 or in the early morning of May 5, 1992, E.K. woke up because she "felt something heavy between my legs." She recalled that the bathroom light was on and I.K. had climbed into bed with her, which she testified was unusual for him. E.K. told him to return to his bed and went back to sleep.

At some point later in the night, E.K. woke again because she had "a feeling like something was over me." When she opened her eyes, she saw the bathroom light was off. She was lying on her back, and she could feel that a man was "over top of me." The man stated that "he knew I had children" and "if I did what he said, he wouldn't hurt anybody." The man had an object in his hand, which he put on the pillow next to her. She testified that she was not sure what the object was "because it's been so long, but I knew it was something."

² We recite the facts "in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Hammer v. Commonwealth*, 74 Va. App. 225, 231 (2022) (quoting *Commonwealth v. Cady*, 300 Va. 325, 329 (2021)). In doing so, we discard any evidence that conflicts with the Commonwealth's evidence, and regard as true all the credible evidence favorable to the Commonwealth and all inferences that can be fairly drawn from that evidence. *Cady*, 300 Va. at 329.

³ We use initials in an attempt to better protect the victim's and children's privacy.

The man told E.K. to turn over. As she complied, E.K. grabbed her one-year-old daughter and hunched over her daughter “just to keep her safe.” The man lifted E.K.’s nightgown and put his penis into her vagina. He was not wearing a condom. E.K. testified that the assault lasted between 30 and 45 minutes. After the man ejaculated, he told E.K. not to do anything until he left. As soon as the man left, E.K. went to a neighbor’s house and called 911 from her neighbor’s phone.

Police officers went to E.K.’s home in response to the 911 call and took pictures of the interior and exterior of her home. E.K. went to the hospital where medical professionals collected her clothing and conducted a sexual assault exam, including taking swabs of her mouth and vagina. The Physical Examination Recovery Kit (PERK) was tested by forensic scientists, who found spermatozoa⁴ present on the swabs from E.K.’s genitals and nightgown. At the time the PERK was tested in 1992, the spermatozoa could not be matched to anyone because “[a]t that point, we had no suspect to do any comparisons with.”

Almost thirty years later, in 2021, the Attorney General of Virginia launched an initiative to retest sexual assault kits that pre-dated the existence of the Combined DNA Index System (CODIS), Virginia’s DNA data bank. E.K.’s case was eligible for retesting, and it was retested in 2022. The retesting of the swab from E.K.’s vagina developed a DNA profile from an unknown male contributor. A forensic scientist submitted the unknown male profile to CODIS, which determined that it was consistent with Gay’s DNA profile.

In August 2023, Norfolk Police Sergeant Brian Williams spoke with E.K. about the 1992 rape. Sergeant Williams showed E.K. a photograph of Gay, but she did not recognize him.

⁴ The Commonwealth called Lynn Baird as a witness, the forensic serologist who conducted the initial testing in 1992. She testified that spermatozoa is “the male reproductive cell” and that the presence of spermatozoa “indicates that some form of sexual activity has taken place with ejaculation.”

Sergeant Williams then interviewed Gay and obtained a buccal swab from him. Gay's DNA sample was compared to the DNA profiles developed from E.K.'s PERK, and he could not be excluded as a contributor to the unknown male DNA profile from the swab of E.K.'s vagina. The likelihood that the DNA on the vaginal swab came from someone other than Gay was "1 in every 5.7 trillion individuals." A grand jury indicted Gay for rape and statutory burglary with a deadly weapon.

At trial, the Commonwealth introduced photographs taken at E.K.'s home after the rape. Two of the photographs depicted the screen that was removed from I.K.'s ground floor bedroom window and placed on the ground. E.K. testified that prior to the rape, the screen was on the window.

The Commonwealth also introduced a recording of the call E.K. made to 911. In it, she can be heard saying, "A man broke into my house and raped me and put a knife to my neck." She told the 911 operator that he came in "through my son's bedroom window." She also stated, "He told me not to move until he slammed my back door." She also described him as a "heavyset black male." E.K. testified that she did not know Gay, had never met him or spoken to him, and had never invited him into her house.

The Commonwealth called Lynn Baird, the forensic serologist who tested E.K.'s PERK in 1992. She explained that her 1992 analysis predated DNA technology, so the testing involved an "examination of blood and other body fluids" by a method called "enzyme typing." Baird described enzyme typing as using particular enzymes to narrow down "different types or different forms that can help to try to differentiate individuals." She testified that enzyme typing was "nowhere near specific as DNA analysis" but helped narrow down whether "this body fluid could be this particular type or that particular type." Baird determined that spermatozoa were present on the vaginal/cervical and thigh/genital smears, in the crotch of E.K.'s underpants, and

in a stain on the back of E.K.'s nightgown. She was able to eliminate E.K. as a contributor, "but I had no one to compare it to to see if anyone else could also fit into that -- those enzyme typing results. At that point, we had no suspect to do any comparisons with."

Senior DNA Analyst Carrie Rau testified that in 2022 she conducted the retesting of E.K.'s PERK under the Attorney General's initiative. A foreign DNA profile from a male contributor was developed on the vaginal swabs. The results were sent to the Virginia Department of Forensic Science (DFS). Anne Pollard, a forensic scientist at DFS, entered the foreign DNA profile into the Virginia DNA data bank and found the profile was consistent with Gay.

After the Commonwealth rested, Gay testified in his own defense.⁵ He testified that he was about 24 or 25 years old in 1992 but was 56 years old at the time of the trial. Gay testified that he lived with his grandparents in Virginia Beach in 1992 but often visited his mother in Norfolk, who he testified lived next door to E.K. Gay claimed that he met E.K. while visiting his mother—and that he and E.K. had a sexual relationship. Gay testified that, on the night that E.K. reported the rape, he and E.K. had arranged for him to come to the house around midnight and enter through the unlocked front door. He stated that I.K. was awake and that the television and the bathroom light were on. Gay testified that he and E.K. had consensual intercourse in E.K.'s bedroom and that the children were not present in the room. Gay further testified that he was having relationships with three other women—and that E.K. asked Gay to stop seeing other women. Gay testified that he was not interested in a relationship with E.K. and that he never went to E.K.'s residence again.

⁵ Gay admitted that he had eight felony convictions, some of which involved lying, cheating, or stealing.

On cross-examination, Gay testified that he did not know E.K.’s name but called her “Easter Bunny.” The Commonwealth then recalled E.K. in rebuttal, and she testified that no one had ever called her “Easter Bunny.” She also denied ever having seen Gay before the trial.

Counsel for Gay moved to strike the charges, arguing that Gay’s testimony contradicted E.K.’s testimony and that the sexual intercourse was consensual. The trial court denied the motion, noting that the jury, as the factfinder, would “have to weigh the credibility of the two key witnesses, Ms. [E.K.] and Mr. Gay.” After deliberating, the jury convicted Gay of rape and statutory burglary. The trial court sentenced him to 45 years of incarceration, suspending 13 years of that 45-year sentence.

ANALYSIS

On appeal, Gay argues, “The trial court erred in denying the Appellant’s motions to strike the charges of rape and burglary of a dwelling while armed with a weapon because sexual intercourse between the Appellant and [E.K.] on May 2, 1992[,] was consensual.” Gay argues that the evidence was insufficient to support his convictions because the only evidence that the intercourse was not consensual was E.K.’s testimony.

“When an appellate court reviews the sufficiency of the evidence underlying a criminal conviction, its role is a limited one.” *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024). “Whether the evidence adduced is sufficient to prove each of those elements is a factual finding, which will not be set aside on appeal unless it is plainly wrong.” *Burton v. Commonwealth*, 85 Va. App. 408, 429 (2025) (quoting *Linnon v. Commonwealth*, 287 Va. 92, 98 (2014)). “In sum, if there is evidence to support the conviction, the reviewing court is not permitted to substitute its judgment, even if its view of the evidence might differ from the conclusions reached by the finder of fact at the trial.” *Id.* (quoting *Linnon*, 287 Va. at 98). “The pertinent question in this appeal is whether a rational factfinder, in light of all the evidence, could have rejected [Gay]’s theories of

innocence and found him guilty beyond a reasonable doubt.” *Commonwealth v. Moseley*, 293 Va. 455, 464 (2017).

I. Rape

It is unlawful for any person to have “sexual intercourse with a complaining witness who is not his or her spouse . . . against the complaining witness’s will, by force, threat or intimidation of or against the complaining witness.” Code § 18.2-61 (Repl. Vol. 1988).⁶ An accused may assert a defense of consent to negate the Commonwealth’s proof that the sexual intercourse was against the victim’s will. *See Clifton v. Commonwealth*, 22 Va. App. 178, 184 (1996).

Convictions for “rape and other sexual offenses may be sustained solely upon the uncorroborated testimony of the victim.” *Poole v. Commonwealth*, 73 Va. App. 357, 368 (2021) (quoting *Wilson v. Commonwealth*, 46 Va. App. 73, 87 (2005)). This is the case because “sexual offenses are typically clandestine in nature, seldom involving witnesses to the offense except the perpetrator and the victim.” *Id.* at 369 (quoting *Wilson*, 46 Va. App. at 88). Therefore, “a requirement of corroboration would result in most sex offenses going unpunished.” *Id.* (quoting *Wilson*, 46 Va. App. at 88).

Under settled precedent, “[t]he sole responsibility to determine the credibility of witnesses, the weight to be given to their testimony, and the inferences to be drawn from proven facts lies with the fact finder.” *Blankenship v. Commonwealth*, 71 Va. App. 608, 619 (2020) (quoting *Ragland v. Commonwealth*, 67 Va. App. 519, 529-30 (2017)). “We also accept the trial court’s determination of the credibility of witness testimony unless, ‘as a matter of law, the testimony is inherently incredible.’” *Nobrega v. Commonwealth*, 271 Va. 508, 518 (2006) (quoting *Walker v. Commonwealth*, 258 Va. 54, 71 (1999)).

⁶ All later references in this opinion to Code §§ 18.2-61 (rape) and 18.2-90 (statutory burglary) are to the versions that were in effect in 1992.

Moreover, “the victim’s testimony alone, if not inherently incredible, is sufficient to support a conviction for rape.” *Id.* at 519 (citing *Snyder v. Commonwealth*, 220 Va. 792, 796 (1980)). “To be ‘incredible,’ testimony ‘must be either so manifestly false that reasonable men ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ.’” *Juniper v. Commonwealth*, 271 Va. 362, 415 (2006) (quoting *Cardwell v. Commonwealth*, 209 Va. 412, 414 (1968)). Inconsistency in a witness’s testimony “does not necessarily render the testimony unworthy of belief.” *Id.* Instead, it is a circumstance “appropriately weighed as part of the entire issue of witness credibility, which is left to the jury to determine.” *Id.*

E.K. testified that in May 1992, she awoke in the middle of the night, and she saw an unknown man standing over her. The man stated he knew E.K. had children but would not harm them if she complied. The man then penetrated her vagina with his penis. E.K. stated that she did not know Gay and was scared during the rape. E.K.’s testimony alone, if believed by the jury, was sufficient to sustain the rape conviction. Indeed, it was sufficient to sustain Gay’s rape conviction even if it was uncorroborated. *See Poole*, 73 Va. App. at 368.

However, E.K.’s testimony did not stand alone. E.K.’s actions immediately following the incident corroborate her trial testimony. *See Lambert v. Commonwealth*, 70 Va. App. 740, 760 (2019) (finding witness’s testimony, which was partially corroborated by defendant’s statement, was not inherently incredible). Immediately after the man fled, E.K. went to her neighbor’s home and called 911. Her 911 call was played for the jury, in which she said, “A man broke into my house and raped me and put a knife to my neck.” Within hours of the incident, she went to the hospital and underwent a sexual assault forensic examination to collect evidence from the rape. The physical evidence collected at the hospital ultimately, although belatedly, led to Gay through advancements in technology comparing DNA. E.K.’s testimony was neither “inherently incredible”

nor “so contrary to human experience as to render it unworthy of belief.” *Kelley v. Commonwealth*, 69 Va. App. 617, 627 (2019) (quoting *Johnson v. Commonwealth*, 58 Va. App. 303, 315 (2011)).

Moreover, the jury was entitled to disbelieve Gay’s account that the intercourse was consensual. *See Dugger v. Commonwealth*, 40 Va. App. 586, 594 n.2 (2003) (“A fact finder may discount an accused’s self-serving explanation as a mere effort at ‘lying to conceal his guilt.’” (quoting *Shackleford v. Commonwealth*, 262 Va. 196, 209 (2001))). Gay’s theory of innocence—that he was in a relationship with E.K. and that the intercourse was consensual—was undermined not only by E.K.’s testimony but also by E.K.’s contemporaneous 911 call, in which she reported that she had been raped by someone whom she described not by name but as a “heavyset black male” who had “broke[n] into my house and raped me and put a knife to my neck.” Thus, we do not disturb the jury’s credibility determination, and we hold that the Commonwealth’s evidence was sufficient to support Gay’s rape conviction.

II. Statutory Burglary

If “any person in the nighttime enters without breaking or in the daytime breaks and enters . . . and conceals himself in a dwelling house . . . with intent to . . . rape . . . , he shall be deemed guilty of statutory burglary.” Code § 18.2-90 (Repl. Vol. 1988).

“[T]he credibility of a witness, the weight accorded the testimony, and the inferences to be drawn from proven facts are matters solely for the fact finder’s determination.” *Fletcher v. Commonwealth*, 72 Va. App. 493, 502 (2020) (quoting *Crawley v. Commonwealth*, 29 Va. App. 372, 375 (1999)). “In its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt.” *Flanagan v. Commonwealth*, 58 Va. App. 681, 702 (2011) (quoting *Marable v. Commonwealth*, 27 Va. App. 505, 509-10 (1998)).

E.K. testified that she did not know Gay and that she had never invited him into her home. She testified that she normally locked her doors and windows at night. The jury was shown photographs that depicted the screen of I.K.'s bedroom window on the ground. E.K. stated that the screen was in I.K.'s window before the rape. She testified that she was awakened in the middle of the night by an intruder who was standing over her, threatened her and her children, and then raped her. A rational factfinder could therefore conclude that Gay was guilty of statutory burglary when he entered E.K.'s residence without her permission with the intent to commit rape.

CONCLUSION

In short, viewing the evidence in the light most favorable to the Commonwealth, a rational factfinder could conclude that Gay entered E.K.'s home through I.K.'s bedroom window in the nighttime in May 1992. After breaking into the home, Gay went to E.K.'s bedroom, threatened her and her children, and raped her before fleeing. Although Gay's testimony contradicted E.K.'s account, whether to believe E.K.'s testimony over Gay's self-serving testimony was a question for the jury. *See Flanagan*, 58 Va. App. at 702.

Consequently, for all of the foregoing reasons, the trial court did not err, and we affirm both of Gay's convictions.

Affirmed.