

COURT OF APPEALS OF VIRGINIA

Record No. 0267-25-1

DONALD EUGENE FETZER
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, White and Duffan

Argued at Norfolk, Virginia

Opinion Issued September 15, 2026

FROM THE CIRCUIT COURT OF GLOUCESTER COUNTY

Jeffrey W. Shaw, Judge

Charles E. Haden for appellant.

C. David Sands, III, Senior Assistant Attorney General (Jason S. Miyares,¹ Attorney General, on brief), for appellee.

PUBLISHED OPINION BY JUDGE RANDOLPH A. BEALES

A jury convicted Donald Eugene Fetzer of two counts of aggravated sexual battery of a victim less than 13 years of age and one count of object sexual penetration of a victim less than 13 years of age by a person 18 years of age or older. On appeal, Fetzer challenges the sufficiency of the evidence to sustain his convictions. He also contends that the trial court admitted inadmissible hearsay into evidence.

BACKGROUND

In November 2021, L.B.² lived with her mother, her mother's boyfriend James McKeel, and her three siblings at her mother's Gloucester County home. L.B. turned eleven years old on

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

² We refer to the victim with initials in an attempt to protect her privacy.

November 9 of that year.³ Around Thanksgiving of 2021, L.B.'s aunt, Ella West, and her longtime boyfriend, Donald Eugene Fetzer, visited L.B.'s family home. Fetzer was sixty-six years old in November of 2021.

One day during L.B.'s Thanksgiving break from school, but before Thanksgiving Day, L.B., McKeel, West, Fetzer, and L.B.'s immediate family attended a party at L.B.'s family home. Around midday during the party, Fetzer asked L.B. if she would like to go outside to listen to music and talk about school. L.B. agreed, and then L.B. and Fetzer went into Fetzer's pickup truck, which was parked in the front yard.

The windows of Fetzer's pickup truck were not tinted. L.B. was seated in the passenger's seat, and Fetzer was seated in the driver's seat. L.B. testified that their interaction was initially normal. Then, however, Fetzer told L.B. that she was pretty and "that he would rather have me [L.B.] than Ella [West], that I was better than Ella [West]." Fetzer then told L.B. to pull down her pants. When L.B. did not comply, Fetzer pulled L.B.'s pants down. Fetzer began touching L.B.'s vagina. When he did so, he told L.B. that her vagina was "pretty." Fetzer then inserted his fingers into her vagina, which caused L.B. pain. Fetzer also asked L.B. to touch his exposed penis, and when L.B. refused to do so, Fetzer took L.B.'s hand and placed it on his penis. In addition, Fetzer leaned over and licked L.B.'s lips. Fetzer then told L.B. that he would harm her and her family if she told anyone what Fetzer had done to her. At some point during the incident, L.B.'s brother was "beating and banging on the back of the truck." L.B. testified that she believed that her brother did so because "he knew that something was going on." The incident ended when L.B.'s sister came outside.

³ L.B. testified that she turned ten years old that November. However, she also testified that she was born on November 9, 2010, therefore making her eleven years old at the time. The discrepancy in age is immaterial.

L.B. did not immediately tell anyone what had happened between her and Fetzer although McKeel and Fetzer “got into a fight,” and McKeel told Fetzer “to stop following [L.B.] around.” However, after the end of her Thanksgiving break, L.B. did tell her school counselor, Elizabeth Pham, about what Fetzer did to her. Pham reported the incident to Child Protective Services (CPS), and CPS forwarded a referral to the Gloucester County Sheriff’s Office on December 1, 2021. Investigator Jon-Eric Holt of the Gloucester County Sheriff’s Office then attended a forensic interview of L.B. As a result of L.B.’s forensic interview, Investigator Holt interviewed Fetzer on January 25, 2022. During the interview, Fetzer claimed that “[L.B.] attempts to sit on everyone’s lap” and that L.B. “would attempt to fall forward and try to kiss him.” Fetzer admitted that he and L.B. were alone together in his truck on the day in question although he believed that L.B. was “trying to make some kind of advancement to him.” Fetzer also claimed that L.B. tried to lean toward him to kiss him while they were in the truck.

At trial, L.B., Investigator Holt, and Pham testified on behalf of the Commonwealth. When the Commonwealth asked Pham about what L.B. disclosed to her, counsel for Fetzer objected based on hearsay. The court overruled the objection and allowed Pham to testify, but stated that she was “limited in the details” and explained that it would only “allow limited details of what she [L.B.] said” to Pham. Pham briefly testified as follows:

The Commonwealth: What acts did she disclose?

Pham: She reported that Donald had asked her to pull her pants down in the truck. She did not. And when she did not, he pulled her pants down; that he had inserted fingers into her vagina, that he moved his fingers around, it was painful, that he asked her to touch his penis, and that he had kissed her on her mouth with his mouth with his tongue.

At the close of the Commonwealth’s case-in-chief, counsel for Fetzer made a motion to strike all of the charges, arguing that L.B.’s testimony was incredible. The circuit court denied the motion

because weighing the credibility of witnesses is up to the factfinder and because “were the jury to believe her [L.B.’s] testimony, the evidence would be sufficient to find the defendant guilty.”

Fetzer testified in his own defense. He testified that he went to his truck because McKeel was drunk and belligerent. Fetzer claimed that L.B. came to his truck on her own without invitation and that they remained there for forty-five minutes to an hour. According to Fetzer, he and L.B. were alone in the truck for most of this time, though L.B.’s brother was initially on the back seat. Fetzer denied molesting L.B. Fetzer’s counsel did not renew his motion to strike after the parties finished presenting all of the evidence to the jury.

The jury found Fetzer guilty of one count of object sexual penetration and two counts of aggravated sexual battery. Following a sentencing hearing, the circuit court issued an order sentencing Fetzer to life imprisonment plus ten years with no time suspended. Fetzer now appeals to this Court.

ANALYSIS

I. Motion to Strike

Fetzer argues, “The trial court erred in denying Fetzer’s motion to strike the two counts of aggravated sexual battery under Va. Code § 18.2-67.3, and one count of object[] sexual penetration under Va. Code § 18.2-67.2.”

However, Fetzer concedes in his brief to this Court that he did not preserve his challenge to the trial court’s decision denying his motion to strike. “No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice.” Rule 5A:18. “The purpose of this contemporaneous objection requirement is to allow the trial court a fair opportunity to resolve the issue at trial, thereby preventing unnecessary appeals and retrials.” *Creamer v. Commonwealth*, 64 Va. App. 185, 195 (2015). “Not just any objection will do.” *Bethea*

v. Commonwealth, 297 Va. 730, 743 (2019) (quoting *Dickerson v. Commonwealth*, 58 Va. App. 351, 356 (2011)). “Procedural-default principles require that the argument asserted on appeal be the same as the contemporaneous argument at trial.” *Id.*

Fetzer nonetheless asks this Court on brief to reach his first assignment of error by applying the ends of justice exception to Rule 5A:18.⁴ He argues “that the error is apparent on the record and consideration of the issues will ‘attain the ends of justice.’” More specifically, he claims that “the Commonwealth was entirely uncorroborated and failed to exclude the reasonable hypothesis of innocence that [L.B.] simply made up the allegations against Donald Fetzer” and that “the Commonwealth’s evidence was insufficient to prove beyond a reasonable doubt that Fetzer ever engaged in any inappropriate sexual activity with [L.B.]”

“The ‘ends of justice’ exception to Rule 5A:18 is ‘narrow and is to be used sparingly.’” *Melick v. Commonwealth*, 69 Va. App. 122, 146 (2018) (quoting *Pearce v. Commonwealth*, 53 Va. App. 113, 123 (2008)). Whether to apply the ends of justice exception involves two questions: “(1) whether there is error as contended by the appellant; and (2) whether the failure to apply the ends of justice provision would result in a grave injustice.” *Commonwealth v. Bass*, 292 Va. 19, 27 (2016) (quoting *Gheorghiu v. Commonwealth*, 280 Va. 678, 689 (2010)).

“The burden of establishing a manifest injustice is a heavy one, and it rests with the appellant.” *Holt v. Commonwealth*, 66 Va. App. 199, 210 (2016) (en banc) (quoting *Brittle v. Commonwealth*, 54 Va. App. 505, 514 (2009)). “[A] defendant must affirmatively show that a

⁴ Fetzer also invokes the good cause exception to Rule 5A:18. “Rule 5A:18 recognizes that this Court may consider an alleged error that was not timely and specifically objected to when ‘good cause [is] shown’” *Flanagan v. Commonwealth*, 58 Va. App. 681, 694 (2011) (first alteration in original) (quoting Rule 5A:18). “The good cause exception is applied when an appellant did not have the opportunity to object to an alleged error during the proceedings below.” *Id.* (citing *Murray v. Carrier*, 477 U.S. 478, 488 (1968)). However, the record shows that Fetzer had ample time to renew his motion to strike, and he has not argued on brief that he was somehow kept from renewing his motion to strike. “As appellant had ample opportunity” to renew his motion to strike, “the good cause exception of Rule 5A:18 does not apply.” *Id.*

miscarriage of justice has occurred, not that a miscarriage might have occurred.” *Melick*, 69 Va. App. at 146 (quoting *Redman v. Commonwealth*, 25 Va. App. 215, 221 (1997)). Furthermore, to demonstrate that a miscarriage of justice has occurred, “[i]t is never enough for the defendant to merely assert a winning argument on the merits—for if that were enough procedural default ‘would never apply, except when it does not matter.’” *Winslow v. Commonwealth*, 62 Va. App. 539, 546 (2013) (quoting *Alford v. Commonwealth*, 56 Va. App. 706, 710 (2010)). “[I]n examining a case for miscarriage of justice, we do not simply review the sufficiency of the evidence under the usual standard, but instead determine whether the record contains affirmative evidence of innocence or lack of a criminal offense.” *Holt*, 66 Va. App. at 210 (quoting *Flanagan v. Commonwealth*, 58 Va. App. 681, 695 (2011)).

Simply put, Fetzer has not met the high burden of establishing a manifest injustice. He has not shown on brief that a manifest injustice would occur if this Court were not to invoke the ends of justice exception. Instead, Fetzer has simply reiterated his claim on the merits that the evidence presented at trial was not enough to support Fetzer’s convictions for the charged crimes.⁵ As noted *supra*, Fetzer’s burden was to show not only that an error may have occurred, but also that the error was so egregious that a court’s failure to apply the ends of justice exception “would result in a grave injustice.” *Bass*, 292 Va. at 27 (quoting *Gheorghiu*, 280 Va. at 689). Fetzer’s brief fails to show

⁵ Even though Fetzer claims that the Commonwealth did not present enough evidence at trial to support the jury’s verdict, L.B. testified during the trial about what Fetzer did to her. The Supreme Court has stated, “A rape conviction may be sustained solely upon the testimony of the victim,” and that “[p]ersuasive authority also extends [this rule] to prosecutions for sodomy and other sexual offenses.” *Fisher v. Commonwealth*, 228 Va. 296, 299 (1984). “There is no requirement of corroboration.” *Id.* “[A] conviction for rape and other sexual offenses may be sustained solely upon the uncorroborated testimony of the victim.” *Cardenas Flores v. Commonwealth*, 84 Va. App. 495, 517 (2025) (alteration in original) (quoting *Wilson v. Commonwealth*, 46 Va. App. 73, 87 (2005)). In short, the Supreme Court and this Court have repeatedly stated that in a case involving a sexual assault, “it is clear that the victim’s testimony, if credible and accepted by the finder of fact, is sufficient evidence, standing alone, to support the conviction.” *Fisher*, 228 Va. at 299; *Flores*, 84 Va. App. at 517.

any grave injustice. Therefore, this Court cannot invoke the ends of justice exception, and we thus cannot reach whether there is any merit to Fetzer’s challenge to the circuit court’s decision overruling his motion to strike.

II. Hearsay Objection

Fetzer also argues,

The trial court erred in overruling Fetzer’s hearsay objection to the testimony of Elizabeth Pham, where her testimony exceeded the scope [of the] hearsay exception set forth in Va. Code § 19.2-268.2 by describing the specific substantive details of [L.B.’s] hearsay statements rather than merely corroborating the fact that the person injured made complaint of the offense recently after commission of the offense.

“Hearsay is ‘a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’” *Pulley v. Commonwealth*, 74 Va. App. 104, 118 (2021) (quoting Va. R. Evid. 2:801(c)). “[I]f evidence is hearsay, it ‘is inadmissible unless it falls within one of the recognized exceptions’ to the rule against hearsay.” *Jones v. Commonwealth*, 71 Va. App. 597, 604 (2020) (quoting *Melick*, 69 Va. App. at 133); see Va. R. Evid. 2:802.

Under the common law’s recent-complaint rule, “evidence of a prompt complaint of rape is admissible to corroborate the complaining witness’ testimony regarding the occurrence of the rape.” *Terry v. Commonwealth*, 24 Va. App. 627, 633 (1997). The General Assembly codified this rule in Code § 19.2-268.2, which states that in cases of sexual assault, “the fact that the person injured made complaint of the offense recently after commission of the offense is admissible, not as independent evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.” Code § 19.2-268.2. Under this rule, “only the fact of the complaint and not details reported by the victim” are admissible. *Mitchell v. Commonwealth*, 25 Va. App. 81, 86 (1997) (citing *Woodard v. Commonwealth*, 19 Va. App. 24, 27 (1994)); *Cartera v. Commonwealth*,

219 Va. 516, 518-19 (1978). However, admitting testimony of the details of a sexual assault is permissible when “the fact of the complaint . . . lay in the details of [the victim’s] statement.”

Breeden v. Commonwealth, 43 Va. App. 169, 187 (2004). Thus, “the scope of admissibility lies within the sound discretion of the trial court.” *Mitchell*, 25 Va. App. at 86.

In *Mitchell v. Commonwealth*, this Court held that the brother of a twelve-year-old victim of a proposition of sodomy could testify as to what the victim told him had happened. *Id.* According to the brother, the victim said that the defendant “told him to lay back and let him [the defendant] suck him [the victim].” *Id.* at 84. The victim relayed this information to his brother the day that the proposition occurred. *Id.* This Court reasoned that it was “unreasonable to expect the victim of such an offense, particularly a child, to express his report in succinct, technical terms.” *Id.* at 86. Instead, this Court explained that it was “consistent with human experience that such a victim will lodge his complaint in the form of a description of the event, and in that description lies his complaint of the offense.” *Id.* Without “[t]he details of the victim’s complaint,” the complaint itself “would have been incomplete.” *Id.*

In *Breeden v. Commonwealth*, this Court held that the circuit court there did not err when it admitted an entire thirty-nine-page transcript of a rape victim’s statement to an investigator the day after she had been raped. 43 Va. App. at 185-87. When the circuit court in that case admitted the whole transcript, it limited consideration of the statement only to “the nature of the sex act” and explained that it could not “go through and try to expurgate it [the transcript] here” because the relevant portions of the transcript were “sort of woven throughout it.” *Id.* at 186. Applying this Court’s previous decision in *Mitchell*, the Court ruled that the circuit court did not err when it admitted the transcript because the victim’s statement “was not reported in succinct and technical terms.” *Id.* at 187. This Court then further explained its reasoning:

Indeed, given the intricate nature of the events, the complaining witness’ account of what happened that night was understandably not

a simple, straightforward complaint of rape. Instead, she provided a lengthy, detailed description of the night's events, recounting, among other things, Breeden's assorted acts of violence against her, his pointing a gun at himself and threatening to kill himself, her denials of his requests to have sex, her fear that he would kill himself, and, ultimately, his having sex with her despite her denials of his requests.

Id.

Here, the details of L.B.'s complaint—like those of the complaining witnesses in *Mitchell* and *Breeden*—show the offenses that she was reporting actually happened to her because L.B.'s disclosure to Pham described precisely what criminal acts Fetzer performed against her.⁶ *See Mitchell*, 25 Va. App. at 86. For example, L.B. disclosed to Pham that Fetzer “pulled her pants down” after she refused to pull her pants down herself and that he then “inserted fingers into her vagina.” Both of these statements describe aspects of the offenses that Fetzer committed against L.B. *See* Code § 18.2-67.2 (stating that a person is “guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness” when “[t]he complaining witness is less than 13 years of age”); Code § 18.2-67.3 (stating that a person is guilty of aggravated sexual battery if that person “sexually abuses the complaining witness, and . . . [t]he complaining witness is less than 13 years of age”). The circuit court also had stated that the Commonwealth was “limited in the details” of what it could elicit from Pham—and also stated that it would only “allow limited details of what she [L.B.] said” to Pham. The circuit court correctly limited the scope of Pham's brief testimony to the essential facts reporting the incident, as described

⁶ To the extent that Fetzer claims L.B.'s complaint was not recent enough to be admissible under Code § 19.2-268.2, L.B. reported what Fetzer did to her no later than a few days (or at most a few weeks) after Fetzer committed the charged offenses. L.B.'s complaint was thus certainly recent within the meaning of Code § 19.2-268.2. *See, e.g., Woodard*, 19 Va. App. at 28-29 (finding that a thirteen-year-old rape victim's disclosure of her rape was admissible under Code § 19.2-268.2 as a recent complaint even though she did not disclose the rape until more than two months after the rape occurred). A minor victim's delay in disclosing a sexual assault can be “explained by and [is] completely consistent with the all too common circumstances surrounding sexual assault on minors—fear of disbelief by others and threat of further harm from the assailant.” *Id.* at 28.

by a child—not by an adult—without which “the complaint would have been incomplete,” and ensured that Pham focused only on those facts and nothing else. *Mitchell*, 25 Va. App. at 86.

In addition, like the twelve-year-old victim in *Mitchell*, it would be unreasonable to expect L.B.—who had just turned eleven years old—to tell Pham what had just happened to her during her Thanksgiving break in “succinct, technical terms.” See *Mitchell*, 25 Va. App. at 86. L.B. could only describe what happened to her in her own words as an eleven-year-old, and she could not be expected to understand and state in legal terms what happened to her in the same way that an adult would or to employ clinical or technical language when reporting the incident to her school guidance counselor. Thus, the fact that L.B. did not report the essential details of what Fetzer did to her “in succinct and technical terms” is actually to be expected given L.B.’s youth. *Breeden*, 43 Va. App. at 187 (explaining that a victim’s statement, which “was not reported in succinct and technical terms,” could be admitted for the jury to consider because of “the intricate nature of the events”). Therefore, because L.B. described to Pham what Fetzer did to her in her own words—and because the circuit court correctly limited the scope of Pham’s testimony to the essential facts of the incident—the circuit court did not abuse its discretion when it overruled Fetzer’s hearsay objection and allowed Elizabeth Pham to report how L.B. described the attack that had happened against her.

CONCLUSION

In short, for all of the foregoing reasons, we do not disturb the judgment of the trial court, and we affirm each of Fetzer’s convictions.

Affirmed.