COURT OF APPEALS OF VIRGINIA

Record No. 0334-25-2

KEVIN ANTONIO RAMIREZ
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Athey, White and Senior Judge Petty

Opinion Issued October 20, 2026*

FROM THE CIRCUIT COURT OF MECKLENBURG COUNTY
S. Anderson Nelson, Judge

(Dorian L. Dalton, Senior Appellate Attorney; Virginia Indigent Defense Commission, on briefs), for appellant.

(Jason S. Miyares,[1] Attorney General; Elizabeth Kiernan Fitzgerald, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

A jury convicted Kevin Antonio Ramirez ("Ramirez") of rape under Code § 18.2-61. On appeal, Ramirez contends the circuit court ("trial court") erred by admitting into evidence the entire video of Ramirez's police interview that included his statements as to the severed charges. Ramirez also contends that the trial court erred by denying Ramirez's motion to strike the rape charge because he alleges that there was insufficient evidence of penetration. Finding no error, we affirm.[2]

* 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.

[2] Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the facts and legal arguments are adequately presented in

I. BACKGROUND[3]

Ramirez, Z.C., and Z.C.'s mother lived in the same house. Ramirez was 26, and Z.C. was 12. Z.C.'s aunt came home on April 26, 2023, to give Z.C. some money. After hearing a noise, she went upstairs and discovered Ramirez and Z.C. in their underwear in Z.C.'s room. Ramirez begged Z.C.'s aunt for forgiveness. After several interviews with child protective services, Z.C. alleged that Ramirez had committed several sex crimes against her on April 26th and in the months leading up to April 26th. Based in part upon Z.C.'s allegations, a grand jury subsequently indicted Ramirez on rape, among other charges[4] in violation of Code § 18.2-61(A)(iii) allegedly having occurred on April 26, 2023 ("April 26th charge"). Ramirez was also indicted for aggravated sexual battery and other lesser and included offenses alleged to have occurred on April 25, 2023, in violation of Code § 18.2-67.4 ("April 25th charges").[5]

Prior to trial, Ramirez moved to sever the April 25th charges from the April 26th charges, alleging that he would be prejudiced if the Commonwealth presented evidence on both charges in the same trial. The Commonwealth did not oppose the motion to sever, and the trial court

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the briefs and record, and the decisional process would not be significantly aided by oral argument." *See* Code § 17.1-403(ii)(c); Rule 5A:27(c).

[3] "On appeal, we review the evidence in the 'light most favorable' to the Commonwealth." *Clanton v. Commonwealth*, 53 Va. App. 561, 564 (2009) (en banc) (quoting *Commonwealth v. Hudson*, 265 Va. 505, 514 (2003)). "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.'" *Commonwealth v. Cady*, 300 Va. 325, 329 (2021) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 323-24 (2018)).

[4] This included an aggravated sexual battery charge.

[5] "If any person has sexual intercourse with a complaining witness . . . and such act is accomplished . . . with a child under age 13 as the victim, he or she shall be guilty of rape." Code § 18.2-61(A)(iii).

granted the motion to sever the charges. The case involving the April 26th charge then proceeded to a two-day jury trial that began on October 21, 2024.

The Commonwealth called Emily Horne ("Horne"), a pediatric nurse at the hospital who testified that Z.C. went to the hospital after the alleged rape and explained to Horn that Ramirez came into her room, touched her, and "almost had intercourse with [her]." Horne explained that Z.C. recalled not wearing pants during the encounter and that Ramirez moved her underwear to the side and touched her with "the man's part." Horne also testified that Z.C. told her that Ramirez "didn't put it all in," meaning that Ramirez only touched the outside of her vulva with his penis. Horne further told the jury that Z.C. described that she was in pain when Ramirez climbed on top of her.

Angela Tuck ("Tuck"), a child protective services employee, also testified that Z.C. told her that Ramirez put his "dick inside of her" vagina. To confirm what Z.C. meant by "inside," Tuck testified that she used a folded piece of paper as a model and had Z.C. explain to her the difference between outside, inside, and under. Tuck recalled that Z.C. repeated that Ramirez did not insert his penis all the way into her vagina.

The Commonwealth then called Z.C. who testified that Ramirez's penis did enter her vagina. She explained that she could feel it and it hurt. She then elaborated, "I don't know if he go inside, because it was hurting me when he put his dick on me like my vagina." She repeated that she could feel Ramirez inside of her vagina. On cross-examination, Z.C. conceded that she previously told Deputy Adrian Guerrero ("Guerrero") and Horne that there was not any penetration because she was moving around to prevent Ramirez's attempts to insert his penis inside her. However, on redirect, Z.C. repeated that some or all of Ramirez's penis was inside her vagina.

Finally, the Commonwealth called Deputy Guerrero who testified that he had traveled to North Carolina on the day of the alleged rape to interview Ramirez who had fled there. The Commonwealth also played a video of the interview between Guerrero and Ramirez for the jury. Guerrero testified that during the interview Ramirez admitted to having sexual contact with Z.C. but denied that there was any penetration. During the video interview, Ramirez also admitted to kissing and having sexual contact with Z.C. in the months leading up to the alleged rape which occurred on April 26, 2023. Ramirez objected to that portion of the video being played for the jury on the basis that Ramirez's prior bad acts before the date of the alleged rape were barred under Virginia Rule of Evidence 2:404(b). The trial court overruled his objection and allowed the Commonwealth to play the video for the jury.

After the Commonwealth rested its case-in-chief, Ramirez moved to strike the rape charge, and the trial court denied the motion. Ramirez did not present any evidence on his behalf and renewed his motion to strike. The trial court denied the renewed motion to strike. The jury was instructed and counsel for both parties completed their closing statements. Following deliberations, the jury returned a guilty verdict on the rape charge. Ramirez then made a motion to set aside the jury verdict, which the trial court denied. The trial court ultimately sentenced Ramirez to mandatory life imprisonment with an additional 20 years, with 20 years suspended. Ramirez appealed.

II. ANALYSIS

A. *Standard of Review*

"The admissibility of evidence is within the broad discretion of the trial court." *Cheripka v. Commonwealth*, 78 Va. App. 480, 494 (2023) (quoting *Warnick v. Commonwealth*, 72 Va. App. 251, 263 (2020)). The trial court's "ruling will not be disturbed on appeal in the absence of an abuse of discretion." *Id.* "In evaluating whether a trial court abused its discretion,

. . . we do not substitute our judgment for that of the trial court. Rather, we consider only whether the record fairly supports the trial court's action." *Kenner v. Commonwealth*, 299 Va. 414, 423 (2021) (quoting *Carter v. Commonwealth*, 293 Va. 537, 543 (2017)). "Only when reasonable jurists could not differ can we say an abuse of discretion has occurred." *Bista v. Commonwealth*, 303 Va. 354, 370 (2024) (quoting *Commonwealth v. Swann*, 290 Va. 194, 197 (2015)).

"Where the sufficiency of the evidence is challenged . . . we review fact finding with the highest degree of appellate deference." *Commonwealth v. Murgia*, 297 Va. 310, 321 (2019) (alteration in original) (quoting *Dietz v. Commonwealth*, 294 Va. 123, 132 (2017)). This Court will affirm the sufficiency of the evidence underlying a conviction unless no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

B. *The trial court did not err in admitting the entire video interview.*

Ramirez first complains that the trial court erred when it admitted the entirety of a video interview between Ramirez and Deputy Guerrero, including the statements as to the severed charges. We disagree.

The Supreme Court of Virginia has long held that evidence of prior acts of sexual intercourse with a minor are admissible "as tending to show the disposition of the defendant with respect to the particular act charged." *Herron v. Commonwealth*, 208 Va. 326, 327 (1967) (citations omitted). It is well established that "evidence of other offenses is generally not admissible to prove guilt of the crime for which a defendant is presently on trial." *Commonwealth v. Minor*, 267 Va. 166, 171 (2004). Such evidence is generally inadmissible for that purpose because it "confuses one offense with the other." *Henderson v. Commonwealth*, 5 Va. App. 125, 127 (1987) (quoting *Lewis v. Commonwealth*, 225 Va. 497, 502 (1983)). However, such evidence may be admissible when "it tends to prove any relevant fact pertaining

to the offense charged, such as conduct and attitude towards the victim . . . motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or if they are part of a common scheme or plan." *Kenner*, 299 Va. at 424 (citation omitted) (providing a non-exhaustive list of circumstances in which prior bad acts are relevant); Va. R. Evid. 2:404(b).

In *Herron*, the Supreme Court of Virginia held that the accused's prior sexual conduct towards an alleged victim was admissible. 208 Va. at 327. The Court held that because Herron had committed the prior abuse every other weekend leading up to the alleged rape, the events were probative of Herron's disposition towards the complaining witness. *Id*.

Here, Ramirez's kissing and sexual contact with Z.C. in the two months leading up to the alleged rape and aggravated sexual battery is factually analogous to Herron's abuse of the complaining witness in the weeks leading up to the alleged rape. 208 Va. at 327. Therefore, like Herron's prior sexual abuse, Ramirez's prior sexual abuse of Z.C. is probative of his conduct and attitude towards Z.C in the period immediately leading up to the alleged offense. *Id.*

"In addition to being relevant and material, [prior bad act] evidence 'is subject to the further requirement that the legitimate probative value of the evidence must exceed its incidental prejudice to the defendant.'" *Kenner*, 299 Va. at 427 (quoting *Rose v. Commonwealth*, 270 Va. 3, 11 (2005)); Va. R. Evid 2:404(b). The Rule 2:404(b) balancing test is "marginally stricter than the balancing test for prejudice used to evaluate the admission of relevant evidence generally." *Williams v. Commonwealth*, 85 Va. App. 718, 737 (2025).

Here, the trial court did not abuse its discretion in deciding that the probative value of the video interview outlining Ramirez's actions leading up to April 26th outweighed any prejudicial effect. *Herron*, 208 Va. at 327-28. Any statements in the video were minimal and had no tendency to enflame the passions of the factfinder. *Conley v. Commonwealth*, 74 Va. App. 658, 673 (2022); *Kenner*, 299 Va. at 427 (holding that evidence was not more prejudicial than

probative where the evidence solely consisted of titles of graphic films that the defendant had watched). Moreover, the Supreme Court has allowed the admission of nearly identical evidence in other rape and sexual battery prosecutions, impliedly recognizing that such evidence passes the Rule 2:404(b) balancing test. *Herron*, 208 Va. at 327-28; *Kenner*, 299 Va. at 427.[6]

"The [factfinder] is entitled to all of the relevant and connected facts, including those which followed the commission of the crime on trial, as well as those which preceded it," and therefore the trial court did not abuse its discretion in allowing in the portion of the video interview concerning the April 25th charges. *Scott v. Commonwealth*, 228 Va. 519, 526-27 (1984).[7]

C. *The evidence at trial was sufficient to sustain a conviction for rape.*

Ramirez next claims that the evidence was insufficient to support that he penetrated Z.C.'s vagina. We disagree.

Under Virginia Code § 18.2-61, "[p]enetration by a penis of a vagina is an essential element of the crime of rape."[8] *Elam v. Commonwealth*, 229 Va. 113, 115 (1985). "[P]roof of penetration, however slight the entry may be, is sufficient" to affirm a conviction for rape. *Id.* Penetration of the vulva is sufficient, "which encompasses the '"external parts of the female sex organs" . . . and includes . . . the outermost parts [such as] the labia majora.'" *Moore v.*

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[6] Ramirez partially rests his objection on the basis that the trial court did not explicitly balance the probative value and the resulting prejudicial effect. However, the trial court is not required to explicitly state its reasoning. *See Pilati v. Pilati*, 59 Va. App. 176, 180 (2011). We presume that the trial court "[knew] the law and [applied] it correctly." *Groves v. Commonwealth*, 50 Va. App. 57, 62 (2007).

[7] Ramirez also argues that, when the trial court granted a separation of the charge for rape and aggravated sexual battery, the trial court implicitly ruled that evidence of aggravated sexual battery was more not more probative than prejudicial. However, the trial court granted the severance of the April 25th charges after the Commonwealth agreed to it, not necessarily because it believed there was a risk of prejudice.

[8] The defendant does not contest any other element of the charge.

Commonwealth, 254 Va. 184, 190 (1997) (citation omitted). By contrast, the mere touching of a penis on a vulva will not constitute rape. *Id.* at 191.

Further, "a conviction for rape . . . may be sustained solely upon the uncorroborated testimony of the victim." *Poole v. Commonwealth*, 73 Va. App. 357, 368 (2021). This is true for all elements of rape, including penetration. *Id.* A jury may decide that a complaining witness's inconsistent testimony is nonetheless credible unless inherently incredible. *Kelley v. Commonwealth*, 69 Va. App. 617, 626-27 (2019) ("Testimony may be contradictory or contain inconsistencies without rising to the level of being inherently incredible as a matter of law.").

However, a complaining witness's direct and clear contradictory statements which leave proof of an essential element "in a state of equipoise" fall short of sufficient evidence when uncorroborated. *Moore*, 254 Va. at 189 (finding insufficient evidence for a rape conviction when the complaining witness in "one breath" on direct examination says that there was penetration then says there was not penetration); *see also Elam*, 229 Va. at 115 (affirming a conviction for rape where overwhelming DNA evidence supported penetration even after the complaining witness's uncertain testimony about whether she was penetrated). A complaining witness may clarify seemingly contradictory testimony concerning penetration. *Davis v. Commonwealth*, 272 Va. 476, 479 (2006). For example, if a witness "was well aware of the structure of her genitalia," explicitly said that the defendant "went in" and testified to feeling pain, then the jury could reasonably infer that the defendant penetrated the complaining witness. *Id.* Thus, contradictory testimony on *direct examination* as to whether penetration occurred at all, or testimony that the complaining witness has *no idea* whether penetration occurred are only sufficient to support a conviction of attempted rape and cannot support an inference of rape. *Id.*

Here, during direct examination, Z.C. testified that she felt pain when Ramirez climbed on top of her. She said she was not sure that Ramirez penetrated her. On cross examination, she

confirmed that she told Horne and Guerrero that Ramirez was only on top of her, and not in her. On redirect, she repeated that Ramirez penetrated her.

Z.C.'s testimony regarding Ramirez's alleged penetration was neither so uncertain nor contradictory on direct examination as to leave the penetration element without support. *Davis*, 272 Va. at 479. Contrary to Ramirez's assertion, Z.C.'s testimony on direct examination was entirely consistent. The only potential inconsistency was that she stated that she felt Ramirez's penis inside her, then stated that she was not sure whether it was inside her. However, she testified she felt pain and she understood the difference between inside and outside the vagina. *Davis*, 272 Va. at 479. Viewing this in the light most favorable to the Commonwealth, a reasonable factfinder could conclude that Ramirez penetrated her. *Id.* This does not render Z.C.'s testimony wholly speculative because Z.C. articulated a rational basis for explaining why she believed she was penetrated. *Davis*, 272 Va. at 479; *Elam*, 229 Va. at 115.

Further, her contradictions on cross-examination look more akin to the classic impeachment scenario than semi-recanting, self-contradicting testimony. *Davis*, 272 Va. at 479; *Moore*, 254 Va. at 189. On cross-examination she answers that she told Tuck one thing, and Horne something else. But these are out-of-court contradictions and the jury "'has the sole responsibility to determine [the] credibility' as well as 'the weight to be given [to the contradictions].'" *Kelley*, 69 Va. App. at 626. Thus, Z.C.'s testimony alone provided sufficient evidence for the jury to return a guilty verdict.

Therefore, the trial court's denial of the motion to set aside the jury verdict is not "plainly wrong or without evidence to support it." *Poole*, 73 Va. App. at 364.[9]

[9] Ramirez also mistakenly relies on a slew of cases which reversed rape convictions because the complaining witnesses' testimony in those cases alluded to vague statements of some sort of sexual act, as opposed to a definite assertion that penetration occurred. Z.C.'s definite assertion that she felt Ramirez's penis inside her renders these cases inapplicable. *See*

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's conclusions.

Affirmed.

McCall v. Commonwealth, 192 Va. 422 (1951); *Ashby v. Commonwealth*, 208 Va. 443, 444 (1968); *Lawson v. Commonwealth*, 13 Va. App. 109, 114 (1991).