# COURT OF APPEALS OF VIRGINIA

**Record No. 0933-25-2**

CLINT STEVENSON AMAYA
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Athey, White and Senior Judge Petty

Argued at Richmond, Virginia

Opinion Issued September 29, 2026*

**FROM THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY**
William E. Glover, Judge

L. Calum Welch (Matthew G Finley; Welch & Wright, PLLC, on briefs), for appellant.

Justin M. Brewster, Assistant Attorney General (Jason S. Miyares,[1] Attorney General, on brief), for appellee.

**MEMORANDUM OPINION BY**
**SENIOR JUDGE WILLIAM G. PETTY**

A jury convicted Amaya of aggravated sexual battery. On appeal, Amaya claims that the court erred by denying his motion to strike a potential juror for cause, limiting the scope of his cross-examination of two witnesses, and giving the jury a so-called *Fisher* instruction.[2] He also argues that the evidence was insufficient to prove he committed aggravated sexual battery. Finding no error, we affirm.

* 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] *See Fisher v. Commonwealth*, 228 Va. 296, 299 (1984) ("A rape conviction may be sustained solely upon the testimony of the victim. There is no requirement of corroboration. *A fortiori*, the same rule applies to the lesser offense of attempted rape. Persuasive authority also extends it to prosecutions for sodomy and other sexual offenses." (citations omitted)).

## BACKGROUND[3]

M.A.[4] was "around five" years old at the end of 2012 and beginning of 2013. She lived with her mother, Claudia Vallecillo, and her siblings in Spotsylvania County. Vallecillo's nephews, Amaya and his older brother, lived with them at the time, and their grandmother, Albertina Ayala De Vallecillo ("Ayala"), visited from Honduras. Amaya was around sixteen years old. Ayala babysat M.A. and her brother while Vallecillo worked and M.A.'s older siblings were at school. Although Amaya went to the same school as M.A.'s older siblings, Amaya sometimes arrived home before M.A's siblings; there were "times when he was [at] home . . . alone" with M.A.

At some point, M.A. was alone with Amaya. Amaya took M.A. to her older sister's bedroom and put her on the bed. He took off her pants, and "put his mouth in [her] front private area." He spat on her vagina and licked and kissed it. He also kissed her naked buttocks, both "on the outside" and "inside" it. He pulled his penis out of his pants, grabbed M.A.'s head and forced his penis into her mouth. He also put his penis in her vagina. Amaya did this "three times, . . . a couple times," but M.A. could not recall whether the separate incidents happened on the same day or different days.

Once, Amaya was interrupted when he and M.A. heard Ayala calling them. They dressed quickly and met her in the living room. She asked them what they had been doing. M.A. told her she did not know, but Amaya said they had been tickling and then tickled her. He gave her "a very sharp look" to indicate that she should go along with his story. She pretended to laugh and tickled

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[3] On appeal, we review the evidence "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.

[4] We refer to the victim by her initials to protect her privacy.

him back. She did not say anything because she did not want Amaya to get in trouble and "tear the family apart," and she did not "exactly know what happened."

In January 2013, Amaya's arm was severed in an accident. He did not touch M.A. again after he lost his arm. After the accident, Amaya "acted like an older brother to" M.A. Amaya continued to live with M.A. and her family for a time, and they never discussed these incidents. When she was in middle school, around 2021, M.A. learned about sexual intercourse in health class and realized what Amaya had done to her when she was a small child. She decided to tell her cousins about the abuse, and one of her cousins informed M.A.'s aunt. M.A. stayed with her aunt in New Jersey for a few weeks at her aunt's request while Vallecillo was in Honduras. When Vallecillo returned to Virginia, M.A. disclosed the incidents to her. M.A.'s cousins contacted the police in New Jersey, and New Jersey police contacted the Spotsylvania County Sheriff's Office.

A grand jury charged Amaya with forcible sodomy and aggravated sexual battery of a victim under the age of 13. Amaya's first trial ended in a hung jury. Before Amaya's second trial, the court entered an agreed order prohibiting the parties from calling Ayala as a witness or presenting her prior testimony at Amaya's second trial. The court also granted the Commonwealth's motion *in limine*, without Amaya's objection, to prohibit the parties from presenting evidence of other sexual assault allegations made by M.A.

During voir dire for Amaya's second trial, the Commonwealth asked potential jurors if there was any reason they would not be able to sit on the jury "due to a personal or family experience with crimes of a sexual nature." Juror 9 asked to approach the bench, and the following exchange occurred:

> Juror 9: Good morning. So my daughter was a victim of a similar crime not too long ago, so I kind of have a -- it hits home, and I could be -- feel like I could listen and make a good decision, but there could be a bias that I'm unaware of inside, you know what I mean.

The court: [Amaya].

Amaya: So you're saying that you're not sure you could sit through all of the evidence and be unbiased?

Juror 9: I think I could, but it does resonate really close to home with me because my daughter was a victim.

Amaya: Okay. So you're worried about that?

Juror 9: A little bit.

Amaya: Okay.

The court: [counsel for the Commonwealth].

The Commonwealth: Would you say that you had any sort of negative experience with the Spotsylvania Sheriff's Office or the Commonwealth Attorney's Office or anything like that?

Juror 9: No.

The Commonwealth: Is there anything about this particular defendant that you feel one way or another about him?

Juror 9: No.

The Commonwealth: So do you think that you would be able to impartially listen to the evidence and make a decision?

Juror 9: I feel like I could, but I just wanted to let you guys know.

The court: Understood.

Amaya moved to strike Juror 9 for cause, but the court denied the motion and stated, "He was rehabilitated." Amaya peremptorily struck him.

During cross-examination, Amaya confronted M.A. with her previous statements[5] that the abuse possibly occurred in June 2012, rather than sometime between the end of 2012 and the beginning of 2013. M.A. noted that she was very young when the abuse occurred and she "wasn't sure on the dates." She clarified that she and her family had made a timeline of the events to help her remember when everything happened. Although M.A. stated that Amaya never put his penis in

[5] This testimony is from the preliminary hearing in December 2021.

her anus, Amaya confronted her with her prior testimony that he had penetrated her anus. She responded, "Well, from what I can recall and remember, yeah, I would say he did both sides."

Vallecillo testified that family members alerted her to M.A.'s revelations about Amaya's conduct after she returned from Honduras and that the police contacted her. On cross-examination, Amaya asked Vallecillo how the police knew to contact her. Vallecillo then asked to speak with the court alone, but the court instructed her that whatever she had to say must be stated in open court. The Commonwealth asked to approach the bench. Outside the presence of the jury, the Commonwealth informed the court that it had advised Vallecillo that she could not testify about certain topics because of the pretrial orders barring presentation of Ayala's prior testimony or evidence of M.A.'s other sexual abuse allegations. The following colloquy occurred:

> Vallecillo: (Interpreter) That's why I didn't say anything because I respect what I was told, and [Amaya is] pushing me towards doing so.
>
> The court: And you did the right thing.
>
> Vallecillo: (Interpreter) Thank you. Thank you. I don't feel that he's legally playing fair. And I don't want, I don't want to fail on what I was told. You set a rule, and he needs to obligate me to not follow that. If he gives me permission I will say everything, all of the crap that has happened. You give me permission I say it, but I'm trying to follow your rules. He's not. He's not.
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> Amaya: Judge --
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> The court: (Interjecting) [Amaya], sit down. Both of you guys. So here is the hard part, there are rules, and some of them are hard to make sense of. And I have listened to you and I understand that you are obeying the rules and you are doing right, and I think we're nearly done. So, [Amaya], do you have any additional cross-examination for this witness?
>
> Amaya: No, sir.

The Commonwealth declined to redirect Vallecillo, and the court excused her.

Matthew Koerper, a Spotsylvania County Sheriff's detective, testified regarding his investigation of M.A.'s allegations. During cross-examination, Amaya broached inconsistencies

between M.A.'s interviews before trial and her testimony in court. When Amaya referenced "the Cobblestone residence," the Commonwealth objected and asked to approach the bench. The Commonwealth claimed that referencing "the Cobblestone residence" also came close to discussing the prohibited Ayala testimony or other accusations. Amaya proffered that Detective Koerper would testify that M.A. previously stated that Amaya abused her at "the Cobblestone residence," but "the Cobblestone residence" had burned down. The court stated, "Don't go there. You made your point," and Amaya responded, "That's okay." Amaya resumed cross-examining Detective Koerper on other topics.

At the close of the Commonwealth's case-in-chief, Amaya moved to strike both charges; he argued that there was no physical evidence and M.A. had been inconsistent regarding when and how often Amaya allegedly abused her. He also claimed that M.A. did not clearly articulate that Amaya penetrated her anus. The court denied the motion. Amaya testified in his own defense. He stated that he did not commit the charged conduct and did not know why he had been accused of abusing M.A. He said he lived at the house with M.A. "back in 2012 and 2013" sometimes. Amaya renewed his motion to strike after he testified, which the court denied "on the same basis."

Amaya also objected to the court giving the jury a *Fisher* instruction, Jury Instruction 21, arguing that the instruction was duplicative of the instructions on witness credibility and the weight of circumstantial evidence. He also argued that it was inflammatory because it used the words "victim" and "rape." The court noted that the instruction was an accurate statement of law but amended it. Granted Jury Instruction 21 read, "A defendant may be convicted of sodomy or aggravated sexual battery solely upon the testimony of the complaining witness without corroboration."

After the court gave the jury an *Allen* charge,[6] it convicted Amaya of aggravated sexual battery but acquitted him of forcible sodomy. Amaya moved to set aside the verdict, claiming the evidence did not support the conviction "given the . . . contradictions and such." The court denied the motion. The court sentenced Amaya, and he filed a second motion to set aside the verdict, arguing that M.A. was not a credible witness. The court stayed execution of Amaya's sentence to consider the motion and ultimately denied it more than 21 days after it sentenced him.

On appeal, Amaya contends that the trial court erred in declining to strike Juror 9 for cause. He also argues that the court improperly limited his cross-examinations of Vallecillo and Detective Koerper. Additionally, he maintains that the court erred by giving the jury the *Fisher* instruction. Finally, he challenges the sufficiency of the evidence to sustain his conviction.

ANALYSIS

I. Potential Juror Bias

A criminal defendant has a right under the United States and Virginia Constitutions to be tried by an impartial jury. U.S. Const. amend. VI; Va. Const. art. I, § 8. Given "this bedrock right, [this] Court has recognized that 'a prospective juror "must be able to give [the accused] a fair and impartial trial. Upon this point nothing should be left to inference or doubt."'" *Goodwin v. Commonwealth*, 71 Va. App. 125, 136 (2019) (second alteration in original) (quoting *Scott v. Commonwealth*, 58 Va. App. 265, 270 (2011)). "[J]uror impartiality is [a question] of fact," and a trial court's decision to seat a juror "is 'entitled to great deference on appeal' unless 'plainly wrong or unsupported by the record.'" *Harvey v. Commonwealth*, 76 Va. App. 436, 454 (2023) (quoting *Huguely v. Commonwealth*, 63 Va. App. 92, 121 (2014)). "Accordingly, the decision to retain or

[6] "The term references *Allen v. United States*, 164 U.S. 492, 501-02 (1896), the seminal case approving the use of a jury instruction encouraging each juror to reconsider and listen to the conclusions of the other jurors in order to reach a unanimous verdict." *Drexel v. Commonwealth*, 80 Va. App. 720, 746 n.8 (2024).

exclude a prospective juror will not be disturbed on appeal unless there has been manifest error amounting to an abuse of discretion." *Taylor v. Commonwealth*, 61 Va. App. 13, 23-24 (2012) (quoting *Lovos-Rivas v. Commonwealth*, 58 Va. App. 55, 61 (2011)). "In conducting our review, we consider the juror's entire *voir dire*, not merely isolated statements." *Ramos v. Commonwealth*, 71 Va. App. 150, 157 (2019) (quoting *DeLeon v. Commonwealth*, 38 Va. App. 409, 412-13 (2002)); *accord Thomas v. Commonwealth*, 279 Va. 131, 164 (2010) (quoting *Lovitt v. Commonwealth*, 260 Va. 497, 510 (2000)).

"[A]mbiguous or equivocal answers by jurors who have previously expressed bias are problematic; a prospective juror should be able to articulate impartiality—and equivocal responses to clarifying inquiries will generally be inadequate to overcome previously stated bias." *Burton v. Commonwealth*, 85 Va. App. 408, 423 (2025). But "one concerning juror response cannot be highlighted in isolation where it is fully explained and clarified elsewhere, and the record confirms the prospective juror can be impartial." *Id.* "The opinion entertained by a juror, which disqualifies him, is an opinion of that *fixed character* which repels the presumption of innocence in a criminal case, and in whose mind the accused stands condemned already." *Lovos-Rivas*, 58 Va. App. at 61 (quoting *Justus v. Commonwealth*, 220 Va. 971, 976 (1980)). "[A] trial judge who personally observes a juror, including the juror's tenor, tone, and general demeanor, is in a better position than an appellate court to determine whether a particular juror should be str[uck]." *Northcraft v. Commonwealth*, 78 Va. App. 563, 589 (2023) (second alteration in original) (quoting *Teleguz v. Commonwealth*, 273 Va. 458, 475 (2007)).

Amaya argues that the court should have struck Juror 9 for cause because he did not unequivocally assure the court that he would be impartial. He points to Juror 9's use of phrases like "I think I could" and "I feel like I could" to assert that Juror 9 did not clearly articulate that he was able to decide the case fairly. But "we defer to the trial court to resolve any potentially equivocal

statements because of its opportunity to observe the juror's tone and demeanor." *Keepers v. Commonwealth*, 72 Va. App. 17, 45 (2020) (citing *Weeks v. Commonwealth*, 248 Va. 460, 475 (1994)). "Where the record does not indicate inflection and tone, we view the statements in the light most favorable to the Commonwealth." *Taylor v. Commonwealth*, 67 Va. App. 448, 460 n.2 (2017).

Juror 9 consistently affirmed that he could evaluate and decide Amaya's case in a fair and impartial manner. When he reported his situation, he did not present it as an inability to remain unbiased, but felt obligated to disclose it as a precaution. Despite expressing some hesitation, acknowledging he was "[a] little bit" worried about having an *unconscious* bias, he stated that he was "unaware" of holding any actual bias towards Amaya. He repeatedly prefaced his answers to Amaya and the Commonwealth's questions by emphasizing his belief that he could set aside his personal situation. At the close of the bench conference, Juror 9 even stated "I feel like I could [be impartial], . . . I just wanted to let you guys know," reinforcing his broader assertion that he could be an unbiased juror and minimizing the significance of any concern he intended to express.

Amaya ignores other portions of voir dire that indicate Juror 9 was impartial. Before the Commonwealth asked the jurors about family members who had been victims of a sexual crime, the court had asked the jury panel, "Is there anyone on the panel that's already formed an opinion about whether the defendant is innocent or guilty?" and "Are any of you aware of any bias or prejudice that you might have for or against the Commonwealth or the defendant?" Juror 9 did not affirmatively respond to either of those questions.[7] Further, when the Commonwealth asked

[7] According to Amaya, the Commonwealth's assertion that Juror 9's silence in response to these questions equated to a denial of bias shifts the burden to the accused to demonstrate that a juror has shown that they are biased. We disagree. Analyzing a potential juror's silence or other response to general voir dire questions reflects our duty to consider a juror's "entire *voir dire*, not just isolated portions." *Huguely*, 63 Va. App. at 121 (quoting *Juniper v. Commonwealth*, 271 Va. 362, 401 (2006)).

whether there was anything about Amaya that made him "feel one way or another," Juror 9 unequivocally responded, "No." Taken together, these responses demonstrate that Juror 9 consistently expressed no preconceived and fixed opinion or bias.

Finally, "[t]he fact that the judge remained 'detached' is significant." *Keepers*, 72 Va. App. at 46 (quoting *McGill v. Commonwealth*, 10 Va. App. 237, 242 (1990)). "We recognize that 'when a trial court itself becomes involved in the rehabilitation of a potential juror, we must review the court's decision to retain the person on the panel more carefully." *Northcraft*, 78 Va. App. at 590 (quoting *Harvey*, 76 Va. App. at 456). The trial court did not question Juror 9 any further after the Commonwealth asked its rehabilitative questions, assuaging any concern that Juror 9 demonstrated his impartiality by "his mere assent to persuasive suggestions" from the court. *Id.* (quoting *Bradbury v. Commonwealth*, 40 Va. App. 176, 181 (2003)). Thus, we must presume that Juror 9 emphasized that he "could" be fair and impartial. *Weeks*, 248 Va. at 475. Accordingly, the court did not abuse its discretion by denying Amaya's motion to strike Juror 9 for cause.

II. Scope of Cross-Examination

"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 th[e] contemporaneous objection requirement [in Rule 5A:18] is to allow the trial court a fair opportunity to resolve the issue at trial, thereby preventing unnecessary appeals and retrials." *Clark v. Commonwealth*, 78 Va. App. 726, 766-67 (2023) (alterations in original) (quoting *Creamer v. Commonwealth*, 64 Va. App. 185, 195 (2015)). "It is the appellant's burden 'to obtain a clear ruling from the trial court' on an issue he wishes to raise on appeal." *McDaniel v. Commonwealth*, 73 Va. App. 299, 313 (2021) (quoting *Young v. Commonwealth*, 70 Va. App. 646, 657 (2019)).

Amaya claims that the court improperly limited his cross-examination of Vallecillo and Detective Koerper. But Amaya did not object to the alleged limitations. While cross-examining both Vallecillo and Koerper, Amaya neither expressed an intention to continue the restricted line of inquiry nor objected to the court's characterization of his questions as venturing into topics that would violate its earlier orders. In fact, at the conclusion of the bench conference with Vallecillo, Amaya advised the court that he had no further questions of her. Similarly, after the Commonwealth objected to Amaya's questions to Detective Koerper about the "Cobblestone residence" and Amaya proffered Detective Koerper's expected testimony, the court instructed Amaya, "Don't go there. You made your point." Rather than challenging the court's admonition or seeking clarification, Amaya responded, "That's okay," and continued his cross-examination of Detective Koerper on unrelated topics.

In each instance, Amaya's exchanges with the trial court contained no objection; rather they indicated that he accepted any limitations the court placed on his cross-examination of Vallecillo and Detective Koerper. Thus, he has not preserved his arguments for review. Although Rule 5A:18 contains exceptions for good cause or to meet the ends of justice, Amaya has not invoked either exception, and we do not consider them sua sponte. *Spanos v. Taylor*, 76 Va. App. 810, 827-28 (2023).

III. *Fisher* Jury Instruction

"A reviewing court's responsibility in reviewing jury instructions is 'to see that the law has been clearly stated and that the instructions cover all issues which the evidence fairly raises.'" *Fahringer v. Commonwealth*, 70 Va. App. 208, 211 (2019) (quoting *Darnell v. Commonwealth*, 6 Va. App. 485, 488 (1988)). "We review a trial court's decisions in giving and denying requested jury instructions for abuse of discretion." *Holmes v. Commonwealth*, 76 Va. App. 34, 53 (2022) (quoting *Conley v. Commonwealth*, 74 Va. App. 658, 675 (2022)). "[W]hether a jury instruction

accurately states the relevant law is a question of law that we review de novo." *Watson v. Commonwealth*, 298 Va. 197, 207 (2019) (quoting *Payne v. Commonwealth*, 292 Va. 855, 869 (2016)).

Amaya claims that Jury Instruction 21 "g[a]ve undue weight" to M.A.'s testimony and that the instruction was cumulative. To begin, Amaya did not argue below that the instruction "g[a]ve undue weight" to M.A.'s testimony. He asserted only that the instruction was inflammatory because it included the words "victim" and "rape"[8] and that it was cumulative of other instructions on witness credibility and circumstantial evidence. Therefore, Amaya has waived the argument that the *Fisher* instruction allows the jury to disregard other evidence besides the complaining witness's testimony.[9] *See* Rule 5A:18.

In addition, the instruction "did not duplicate any of the other instructions given by the court. No other instruction advised the jury that it could convict appellant based solely on [the complaining witness's] uncorroborated testimony, if credible." *Nottingham v. Commonwealth*, 73 Va. App. 221, 230 (2021). Jury Instruction 21 provided distinct and accurate guidance to the jury rather than duplicating other instructions. Therefore, the court did not abuse its discretion by giving the jury the amended *Fisher* instruction.

IV. Sufficiency of the Evidence

"When faced with a challenge to the sufficiency of the evidence supporting a criminal conviction, an appellate court is faced with the limited task of determining 'whether *any* rational

[8] The court amended the instruction to remove both words.

[9] Below, Amaya stated "As far as [the Commonwealth is] saying [that *Fisher* is] still good law, that is the case, I still haven't seen it as far as something that's been approved." Amaya's vague doubts concerning *Fisher*'s continued force are too indistinct to encompass his argument in this Court that "*Fisher* does not stand for the principle that a defendant can be convicted based upon the testimony of the victim *regardless* of the existence of corroborating or conflicting evidence."

trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026) (quoting *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024)). "The judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680). Thus, "[i]f there is evidentiary support for the conviction, a trial court's judgment stands." *Reed v. Commonwealth*, 85 Va. App. 196, 207 (2025).

Amaya contends that the evidence was insufficient to sustain his conviction,[10] pointing to the inconsistencies in M.A.'s testimony.[11] To the extent that Amaya argues that M.A.'s inconsistent statements about when and how often Amaya abused her and whether he penetrated her anus undermined his conviction, "we must defer to the factfinder's responsibility 'to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Bista v. Commonwealth*, 78 Va. App. 391, 417 (2023) (quoting *Abdullah v. Commonwealth*, 53 Va. App. 750, 755 (2009)).

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[10] Amaya also claims the court failed "to fully consider the new quantum of evidence" when it denied his renewed motion to strike "on the same basis" that it denied his original motion. He asserts that the court did not account for his testimony when it denied his renewed motion. But again, Amaya did not raise that argument in the trial court and so has waived it as well. *See* Rule 5A:18.

[11] The Commonwealth maintains that Amaya's reference to "the contradictions and such" was not a sufficient basis to preserve his first motion to set aside the verdict. But Amaya argued that the evidence was insufficient to sustain his conviction because of those contradictions, and the court ruled that "there were facts sufficient to allow the jury to make its determination on each of the two charges." Therefore, we address Amaya's argument regarding the sufficiency of the evidence.

The Commonwealth is correct, however, that the trial court did not have jurisdiction to rule on Amaya's second motion to set aside the verdict, which he filed after the court sentenced him. Although the court suspended execution of Amaya's sentence to consider the motion, it did not modify, vacate or suspend its judgment within 21 days of its original sentencing order. *See* Rule 1:1; *see also Russell v. Commonwealth*, 79 Va. App. 618, 625 (2024) (orders staying execution of a sentence do not alter the substantive provisions of a final judgment). Thus, the court's ruling on the motion is void, and we cannot consider the arguments made in Amaya's filed motion.

"The mere fact that a witness may have delayed in reporting knowledge of a case or given inconsistent statements during the investigation of a crime does not necessarily render the testimony unworthy of belief." *Juniper v. Commonwealth*, 271 Va. 362, 415 (2006). 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.* "When the law says that it is for the triers of the facts to judge the credibility of a witness, the issue is not a matter of degree." *Towler v. Commonwealth*, 59 Va. App. 284, 291 (2011) (quoting *Swanson v. Commonwealth*, 8 Va. App. 376, 379 (1989)). "[C]ontradictory statements by a witness go not to competency but to the weight and sufficiency of the testimony. If the trier of the facts sees fit to base the verdict upon that testimony there can be no relief in the appellate court." *Id.* (quoting *Swanson*, 8 Va. App. at 379).

Amaya highlights M.A.'s inconsistent statements about when the abuse occurred and her admission that she had difficulty remembering the timeline of events. He claims her contradictory statements amounted to "conflicting accounts of the essential facts of the charges." Those alleged inconsistencies, however, did not render her testimony inherently incredible as a matter of law. *See Kelley v. Commonwealth*, 69 Va. App. 617, 626 (2019). M.A. "'did not waiver' with respect to the essential acts constituting" aggravated sexual battery. *Bista*, 78 Va. App. at 417 (quoting *Nobrega v. Commonwealth*, 271 Va. 508, 518 (2006)). M.A. testified that Amaya touched her intimate parts and forced her to touch his intimate parts, and the jury could conclude from her testimony that Amaya intended to sexually gratify himself.

In addition, there is no inconsistency between the verdicts acquitting Amaya of forcible sodomy but convicting him of aggravated sexual battery. *See Wandemberg v. Commonwealth*, 70 Va. App. 124, 139 (2019) ("Verdicts or convictions are inconsistent when the essential elements in the count wherein the accused is acquitted are identical and necessary to proof of conviction on the guilt count." (quoting *Akers v. Commonwealth*, 31 Va. App. 521, 528 n.3 (2000))). The jury

determined that the Commonwealth proved beyond a reasonable doubt that Amaya sexually abused M.A. but not that he penetrated her anus, an essential element to prove forcible sodomy but not for aggravated sexual battery. *See Bowden v. Commonwealth*, 52 Va. App. 673, 676-77 (2008).

The evidence was sufficient to sustain a conviction for aggravated sexual battery. Thus, the court did not abuse its discretion by denying Amaya's motion to set aside the verdict.[12]

CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

*Affirmed.*

[12] Amaya also suggests that, in acquitting him of forcible sodomy but convicting him of aggravated sexual battery, the jury must have "felt more compelled by the *Allen* instruction by the court and the desire to end deliberations than they did by the evidence." Amaya did not challenge the *Allen* instruction, nor did he claim that the jury reached its verdict with improper motives. Accordingly, we cannot consider any argument that the court's *Allen* charge wrongfully influenced or coerced the jury. Rule 5A:18.