

COURT OF APPEALS OF VIRGINIA

Record No. 1208-25-1

PAUL THOMAS CHEATHAM
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Beales, White and Duffan

Argued at Norfolk, Virginia

Opinion Issued September 8, 2026

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

David W. Lannetti, Judge¹

J. Barry McCracken, Assistant Public Defender, for appellant.

Justin B. Hill, Assistant Attorney General (Jason S. Miyares,² Attorney General, on brief), for appellee.

PUBLISHED OPINION BY JUDGE RANDOLPH A. BEALES

Following a jury trial, the Circuit Court of the City of Norfolk convicted Paul Thomas Cheatham of aggravated sexual battery of a victim under the age of 13, in violation of Code § 18.2-67.3(A)(1); taking indecent liberties with a child over whom he had a custodial relationship, in violation of Code § 18.2-370.1(A); object sexual penetration of a victim under the age of 13, in violation of Code § 18.2-67.2; and two counts of forcible sodomy of a victim under the age of 13, in violation of Code § 18.2-67.1. On appeal, Cheatham argues that the trial court erred in admitting the video of the child's forensic interview and erred in admitting Cheatham's prior conviction of a

¹ Judge Joseph C. Lindsey presided over the July 17, 2024 hearing on the Commonwealth's motion to admit the video of H.C.'s forensic interview and ruled on that motion.

² Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

sexual offense. Cheatham further argues that the evidence was insufficient to support his two convictions for forcible sodomy and his conviction for object sexual penetration.

BACKGROUND³

H.C.,⁴ Cheatham's 5-year-old daughter, told some of her kindergarten classmates that her dad had done something to her, and her teacher overheard the conversation. The teacher then notified the school administration, and the school administration notified Child Protective Services. Detective Erin Payne testified at trial. She testified that she received a report of a sexual assault from Child Protective Services on November 15, 2021, and she then scheduled a forensic interview with H.C. for November 22, 2021. After the interview, Detective Payne obtained an arrest warrant for Cheatham and a search warrant for the Cheatham house.

Catherine Tricomi, a child forensic interviewer for the Children's Hospital of the King's Daughters, testified as an expert in child sexual abuse, forensic interviewing, and delayed disclosure. Tricomi is trained in using various guidelines and protocols for conducting a forensic interview with a child, such as "Child First" and the "National Children's Advocacy Center model" (NCAC). Tricomi explained that those protocols do not use "truth-versus-lie scenarios" like some other protocols. She further explained that she would "elicit a promise to tell the truth from the children, and we don't have the full discussion" unlike some protocols that use "truth-

³ "Under the applicable standard of review, this Court views the evidence in the light most favorable to the Commonwealth, as the prevailing party below." *Park v. Commonwealth*, 74 Va. App. 635, 643 n.2 (2022). "This principle 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.'" *Kelley v. Commonwealth*, 289 Va. 463, 467-68 (2015) (quoting *Parks v. Commonwealth*, 221 Va. 492, 498 (1980)).

⁴ "To the extent that this opinion discusses facts found in sealed documents in the record, we unseal only those facts." *Bozarth v. Shelton*, 87 Va. App. 401, 403 n.2 (2026) (quoting *Brown v. Va. State Bar ex rel. Sixth Dist. Comm.*, 302 Va. 234, 240 n.2 (2023)). Furthermore, we refer to the child using only initials in an attempt to better protect her privacy.

versus-lie scenarios.” Tricomi explained that the Child First and NCAC protocols do not use the “truth-versus-lie scenarios” because some children “don’t have the language to actually verbalize that and provide an accurate definition of it.”

Before Tricomi testified, the video of her forensic interview with H.C. was played for the jury and submitted as Exhibit 1. The video is about an hour and fifteen minutes in length. Following a few minutes of introductory questions, Tricomi began to ask what H.C.’s father had done to her. H.C. said that “he pulled my stuff down-he pulled his stuff down.” H.C. and Tricomi briefly discussed the difference between lying and telling the truth, and H.C. promised to tell the truth for the rest of the interview. Tricomi then asked H.C. whether Cheatham had done this once or more than once, and H. C. said, “more than one time.” The first instance that H.C. recalled happened while watching television in “mom’s room.” Cheatham undressed himself and undressed H.C. H.C. then stated that “he put his private spot in my private spot” and reiterated that this happened “more than one time.” In addition, she said Cheatham “touched my butt” whenever they hugged while the rest of the family was asleep. H.C.’s parents argued over “this,” and Cheatham told her to “keep it a secret.” Another instance occurred while Cheatham and H.C. sat on the couch watching television. H.C. stated that he “pulled his stuff down and then did it to me.” Because H.C. did not know the word for the male or female “private spot,” she identifies both by saying they are for “using the bathroom.”

Tricomi began to ask about more specific details about the assault following these statements, such as where exactly Cheatham’s “private spot” touched her. H.C. responded, “the inside.” H.C. then reaffirmed that “he did it on more days” and that this occurred “more than one time.” H.C. also added that “sometimes he used his finger to dig in my private spot.” Tricomi asked whether that was on her skin or inside, and H.C. initially said on her skin before saying, “actually he was doing it inside.” Close to the end of the interview, Tricomi showed H.C. two

charts displaying a male figure and a female figure and asked H.C. to identify the “private spots.” In response, H.C. circled the crotch on both charts.

Two days after the forensic interview of H.C. on November 24, 2021, officers arrested Cheatham and questioned him for six hours. On July 18, 2024,⁵ Cheatham moved to suppress the evidence from the police interrogation of Cheatham, because of factors such as the length of the interrogation, the tactics used by police, the police interrogator’s lie about matching DNA evidence, the promise of leniency, and statements made regarding Cheatham’s wife. The circuit court then granted that motion to suppress the police’s interrogation of Cheatham in its entirety. The trial court specifically noted, that although each factor alone was not “enough to overbear Cheatham’s free will,” the totality of the circumstances was “coercive enough to overcome Cheatham’s free will.”

On January 9, 2024, the Commonwealth moved to admit the video of H.C.’s forensic interview. After holding a hearing on the motion on July 17, 2024, the trial court took the matter under advisement so it could review the interview and the materials submitted by counsel. The trial court subsequently granted the Commonwealth’s motion, stating that the video was “sufficiently without taint,” had sufficient probative value, and was admissible.

The Commonwealth filed a notice of intent to introduce Cheatham’s prior conviction of attempted rape. Cheatham moved to suppress his prior conviction, and the trial court heard argument on that motion to suppress on January 31, 2025. Cheatham argued that the prior conviction’s probative value would be outweighed by the unfair prejudice generated from its admission. Cheatham also argued that this Court’s previous ruling in *Blankenship v. Commonwealth*, 69 Va. App. 692 (2019), required the facts and circumstances to be similar

⁵ The record indicates that the case was significantly delayed in coming to trial due to several continuance requests by defense counsel.

between the previous conviction and the pending charge for the previous conviction to be admitted into evidence. The trial court then held that the prior conviction's probative value was not outweighed by the danger of unfair prejudice and that the facts and circumstances were similar enough to justify admission of the prior conviction into evidence. The trial court explained that any risk of unfair prejudice was mitigated because only the conviction order would be admitted and because the underlying facts would not be disclosed.

At trial, the jury convicted Cheatham of each charged offense: (1) aggravated sexual battery of a victim under the age of 13; (2) taking indecent liberties with a child over whom he had a custodial relationship; (3) object sexual penetration of a victim under the age of 13; and (4) two counts of sodomy of a victim under the age of 13. The trial court sentenced Cheatham to a total of 165 years of incarceration—with 115 years suspended. Cheatham now appeals to this Court.

ANALYSIS

I. Admissibility of the Evidence

“A trial court’s decision on the admissibility of evidence is reviewed for abuse of discretion.” *Diaz v. Commonwealth*, 80 Va. App. 286, 304 (2024). “In evaluating whether a trial court abused its discretion, . . . ‘[this Court does] not substitute [its] judgment for that of the trial court. Rather, [this Court] consider[s] only whether the record fairly supports the trial court’s action.’” *Id.* at 304-05 (alterations in original) (quoting *Carter v. Commonwealth*, 293 Va. 537, 543 (2017)). “We review issues of statutory interpretation de novo.” *Mary Washington Healthcare v. Costello*, 86 Va. App. 191, 197 (2025) (quoting *Taylor v. Commonwealth*, 77 Va. App. 149, 162 (2023)).

A. The Forensic Interview Video

Cheatham argues, “The trial court erred in admitting the videotaped forensic interview of the child victim because the Commonwealth’s evidence did not satisfy the admissibility requirements for the out-of-court statement to qualify as a hearsay exception under Virginia Code § 19.2-268.3.”

Code § 19.2-268.3(B) provides:

An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing who is the alleged victim of an offense against children describing any act directed against the child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:

- a. The child’s personal knowledge of the event;
- b. The age, maturity, and mental state of the child;
- c. The credibility of the person testifying about the statement;
- d. Any apparent motive the child may have to falsify or distort the event, including bias or coercion;
- e. Whether the child was suffering pain or distress when making the statement; and
- f. Whether extrinsic evidence exists to show the defendant’s opportunity to commit the act; and

2. The child:

- a. Testifies; or
- b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

Code § 19.2-268.3(B) allows an out-of-court statement by a child under 13 to be admitted into evidence when the statement describes an offense against the child. Here, the out-of-court statement was a forensic interview of H.C. describing the offense that her father committed against her. The statute also requires that the child testify (or be declared unavailable), and H.C. did testify at Cheatham’s trial so that requirement in the statute is clearly met here. Code § 19.2-268.3(B)(2).

The trial court must then consider whether the “time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy.” Code § 19.2-268.3(B)(1). H.C. had personal knowledge of the events because she was describing what her father did to her. Code § 19.2-268.3(B)(1)(a). Although H.C. was only five years old at the time of the forensic interview, she still responded clearly to the questioning of her. Code § 19.2-268.3(B)(1)(b).

The Commonwealth referenced Code § 19.2-268.3 when it filed its motion to admit the video of H.C.’s forensic interview into evidence, and the trial court took that motion under advisement. As required by the statute, the trial court considered H.C.’s credibility and found that the video of the forensic examination was “sufficiently without taint.” Code § 19.2-268.3(B)(1)(c); *Mary Washington Healthcare*, 86 Va. App. at 197 (“The trial court is presumed to know and correctly apply the law ‘absent clear evidence to the contrary in the record.’”). H.C.’s forensic interview was conducted only a few days after she reported the abuse to her teacher. Furthermore, H.C. promised to be truthful during her discussion with Tricomi. During the forensic interview, H.C. accurately recalled the details of other events and also described important family information correctly—as well as discussed and answered questions about the details of the sexual assaults.

Cheatham suggests in his brief to this Court that there was no evidence that showed that H.C. did not actually have a “motive to falsify or distort the events.” Code § 19.2-268.3(B)(1)(d). However, any apparent motive is only one of the factors that the trial court could consider. Furthermore, the record before us on appeal does not indicate that H.C. had any motive to falsify or distort the events, and this Court on appeal must consider the evidence in the “‘light most favorable’ to the Commonwealth” because the Commonwealth was “the prevailing party below.” *Diaz*, 80 Va. App. at 295 (quoting *Clanton v. Commonwealth*, 53 Va. App. 561, 564 (2009) (en banc)) (“That principle 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 that may be drawn therefrom.’” (quoting *Kelly v. Commonwealth*, 41 Va. App. 250, 254 (2003) (en banc))).

H.C. clearly did not appear to be suffering any pain or distress at any point in the forensic interview. Code § 19.2-268.3(B)(1)(e). The trial court also had evidence before it that showed that the defendant certainly had the opportunity to commit the acts for which he was convicted. Cheatham was H.C.’s father, and they lived together in the same home at the time of the offenses. Code § 19.2-268.3(B)(1)(f).

After weighing the statutory factors to be considered, the trial court determined that the forensic interview was “sufficiently without taint” and that the video of the interview “has enough probative worth that it should come in.” Code § 19.2-268.3(B)(1). H.C. testified at the trial to the same facts that were presented in the video of the forensic interview, and Tricomi testified about how she conducted the forensic interview.

In short, we cannot say that the trial court abused its discretion when it admitted the forensic video of H.C. into evidence because “the time, content, and totality of circumstances surrounding the statement” provided “sufficient indicia of reliability so as to render it inherently

trustworthy.” Code § 19.2-268.3(B). And the child also actually testified at the trial.

Consequently, both requirements in Code § 19.2-268.3(B) were met, and the circuit court did not err in admitting the forensic interview of the child.

B. Previous Conviction for a Prior Sexual Offense

Cheatham next argues, “The trial court erred by admitting into evidence the record of the Appellant’s previous conviction of a prior sexual offense because its only relevance was for the purpose of establishing criminal propensity and the probative value of the evidence was substantially outweighed by its unfair or unduly prejudicial effects.”

Code § 18.2-67.7:1 states, “In a criminal case in which the defendant is accused of a felony sexual offense involving a child victim, evidence of the defendant’s conviction of another sexual offense or offenses is admissible and may be considered for its bearing on any matter to which it is relevant.” This Court has previously stated, “The language of Code § 18.2-67.7:1 changed the general prohibition against character evidence to prove propensity by creating a narrow exception in child sexual abuse cases.” *Blankenship v. Commonwealth*, 69 Va. App. 692, 700-701 (2019). “Upon proper notice by the Commonwealth, Code § 18.2-67.7:1 and Rule 2:413 permit the admission of evidence in the form of a defendant’s prior conviction in prosecutions for felony sexual offenses against a child ‘for the purpose of establishing propensity to commit other sexual offenses.’” *Id.* at 701 (quoting *United States v. Kelly*, 510 F.3d 433, 437 (4th Cir. 2007)). Prior convictions may still be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, because “all relevant evidence is subject to a balancing test to assess the probative value against any undue prejudicial effect.” *Id.*; Rule 2:403(a)(i).

This Court has previously explained that a trial court is “entitled to consider the indictment, police report, and witness statements from the prior conviction” to determine

whether “the probative value of the prior conviction outweighed the danger of unfair prejudice.” *Blankenship*, 69 Va. App. at 702-03. In *Blankenship*, this Court noted that the defendant’s prior conviction and his current offense shared several similarities: the defendant exposed himself to a minor child, he used a vehicle to facilitate the offense, and the female victim was much younger and dependent on the defendant for transportation. *Id.* This Court then found that the trial court “did not err in finding that the prior conviction was highly probative of appellant’s propensity to commit the crime charged” and that the “probative value outweighed the risk of any unfair prejudice.” *Id.* at 702-03.

In making its determination in the case now before us on appeal, the trial court here considered Cheatham’s prior conviction including the indictment, police report, witness statements, and detective notes. The trial court found that the evidence contained “several similarities between Cheatham’s current charges and his prior conviction.” Both Cheatham’s prior conviction and new charges involved female victims who are minors and knew Cheatham prior to the sexual assaults. Both “involved nonconsensual sexually violent acts—forcible sodomy here and attempted rape previously.” Thus, we certainly cannot say that the trial court abused its discretion when it admitted evidence of Cheatham’s prior conviction because the probative value of Cheatham’s prior conviction of attempted rape was not outweighed by the danger of unfair prejudice.

Cheatham further argues that “by presenting the jury with only the fact of the prior conviction itself, its probative value as to any matter relevant to the current charges was further reduced and the potential for unfair prejudice further enhanced.” Like in *Blankenship*, the trial court excluded the underlying facts of Cheatham’s prior conviction from the jury’s consideration and only the prior conviction was admitted into evidence. 69 Va. App. at 702-03. The underlying facts of Cheatham’s prior conviction—according to the trial court’s letter opinion—

indicate that he “invited a sixteen-year-old girl over to his brother’s trailer home,” and he “convinced her to walk around to the back of the trailer, where he proceeded to put his hand over her mouth and forcibly rape her.” Cheatham was convicted of *attempted* rape despite the fact that he actually did violently rape a female who was a minor—according to the underlying indictment and other case documents. Clearly, the potential for any unfair prejudice was not further increased by excluding from the jury the actual lurid details underlying Cheatham’s prior conviction—and where he was only convicted of *attempted* rape instead of actually being convicted of rape.

II. Sufficiency of the Evidence

“When reviewing the sufficiency of the evidence to support a conviction, ‘the relevant question is, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Jefferson v. Commonwealth*, 298 Va. 1, 10 (2019) (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). “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.’” *Id.* (quoting *Commonwealth v. Perkins*, 295 Va. 323, 327 (2018)).

A. Forcible Sodomy

Cheatham argues that the trial court erred in denying his motion to strike as to the two counts of forcible sodomy because “there was insufficient evidence to establish penetration of the Appellant’s penis into the mouth or anus of the alleged victim or of his mouth or tongue into her sexual organ.”

Code § 18.2-67.1 provides that a defendant is “guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness” who is “less than 13 years of age.” To establish forcible sodomy under Code § 18.2-67.1, the

Commonwealth has the burden to prove beyond a reasonable doubt that penetration, however slight, has occurred. *See Bowden v. Commonwealth*, 52 Va. App. 673, 677 (2008).

“Because sexual offenses are typically clandestine in nature, seldom involving witnesses to the offense except the perpetrator and the victim, a requirement of corroboration would result in most sex offenses going unpunished.” *Cardenas Flores v. Commonwealth*, 84 Va. App. 495, 517 (2025) (quoting *Garland v. Commonwealth*, 8 Va. App. 189, 191 (1989)). “Thus, 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.” *Id.* (quoting *Fisher v. Commonwealth*, 228 Va. 296, 299 (1984)).

H.C. identified her “private spots” as the parts of her body that she uses to go to the bathroom. H.C. correctly labeled an anatomical drawing and also identified Cheatham’s “private spot” as his penis. At trial, H.C. testified that her “dad had sex with me.” H.C. further testified that Cheatham put his “private part” in “[m]y butt.” During her forensic interview, H.C. also explained that Cheatham “put his private spot in my private spot.” Because of the clandestine nature of sexual offenses, the victim’s testimony alone was sufficient to support Cheatham’s convictions. *Id.* Therefore, we cannot say that no rational finder of fact could find Cheatham guilty of forcible sodomy.

B. Object Sexual Penetration

Cheatham further argues that the trial court erred in denying his motion to strike as to object sexual penetration because “there was insufficient evidence to establish the penetration of the anus or outer lips of the female sexual organ of the alleged victim with any object.”

A defendant is guilty of object sexual penetration:

if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose . . . and . . . [t]he act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person.

Calokoh v. Commonwealth, 76 Va. App. 717, 733 (2023) (alterations in original) (quoting Code § 18.2-67.2(A)(2)). Penetration with a finger is sufficient to convict a defendant of object sexual penetration. *See Bell v. Commonwealth*, 22 Va. App. 93, 98-99 (1996).

As noted *supra*, H.C. identified her “private spot” as the part of her body that she uses to go to the bathroom. She also identified a girl’s “private spot” as her vagina on an anatomical picture of a female. H.C. explained to Catherine Tricomi that “sometimes [Cheatham] used his finger to dig in [her] private spot.” H.C.’s statement supports the finding that Cheatham penetrated H.C.’s labia majora. H.C. further clarified that Cheatham’s finger was not only on her skin but went “in my private spot.” Even if there were no supporting circumstantial evidence, H.C.’s testimony alone was sufficient to support Cheatham’s conviction of object sexual penetration due to the clandestine nature of sexual offenses. *Cardenas Flores*, 84 Va. App. at 517. Thus, for these reasons and given these facts, we certainly cannot say that no rational factfinder could find Cheatham guilty of object sexual penetration.

CONCLUSION

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

Affirmed.