Appendix A

VIRGINIA:

In the Court of Appeals of Virginia on **Tuesday** *the* **9th** *day of* **March, 2021.**

Jowell Legendre, s/k/a
Jowell Travis Legendre, Appellant,

against Record No. 0642-20-2
Circuit Court Nos. CR19-102-01 through CR19-102-03 and CR19-102-05

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Charlottesville

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

I. A jury found appellant guilty of robbery, object sexual penetration, sodomy, and credit card larceny. Appellant contends that the evidence is insufficient to support his convictions.[1]

"When reviewing the sufficiency of the evidence, '[t]he judgment of the trial court is presumed correct and will not be disturbed unless it is plainly wrong or without evidence to support it.'" Smith v. Commonwealth, 296 Va. 450, 460 (2018) (quoting Commonwealth v. Perkins, 295 Va. 323, 327 (2018)). "In such cases, '[t]he Court does not ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" Secret v. Commonwealth, 296 Va. 204, 228 (2018) (quoting Pijor v. Commonwealth, 294 Va. 502, 512 (2017)). "Rather, the relevant question is, upon review of 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." Id. (quoting Pijor, 294 Va. at 512). "If there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" Chavez v.

[1] Appellant also pleaded guilty to misdemeanor peeping. He did not appeal that conviction.

Commonwealth, 69 Va. App. 149, 161 (2018) (quoting Banks v. Commonwealth, 67 Va. App. 273, 288 (2017)).

"In accordance with familiar principles of appellate review, the facts will be stated in the light most favorable to the Commonwealth, the prevailing party at trial." Gerald v. Commonwealth, 295 Va. 469, 472 (2018) (quoting Scott v. Commonwealth, 292 Va. 380, 381 (2016)). In doing so, we discard any of appellant's conflicting evidence, and regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence. Id. at 473.

On September 19, 2018, V.M., a University of Virginia student, was changing her clothes in her basement bedroom in Charlottesville. While standing naked in her room, she heard a noise and turned to see a light shining through her window. She and her roommate went to an upstairs deck and saw appellant walking towards them holding a flashlight and making "pretty intense eye contact." Frightened, they went inside, locked the door, and called 911. V.M. described the man she saw as a black male, approximately 5'7" to 5'10" tall, wearing jeans and a red shirt.

Charlottesville Police Officer Treymane Waddy responded to V.M.'s call. Waddy searched the area but could not find the suspect. A short time later, Waddy received another call concerning a robbery nearby. The suspect was described as a black male, 5'10" tall, wearing jeans and a red shirt.

Less than a mile from V.M.'s apartment, N.G., another University of Virginia student, was walking home when she saw appellant walk past her. A few minutes later as she neared her house, appellant jumped out from behind a bush and punched N.G. in the face. N.G.'s tooth was twisted and pushed back from the impact. N.G. fell to the ground, bleeding from her mouth and lip. Appellant demanded N.G.'s phone and wallet, which, fearing for her life, she surrendered to him.

Appellant pulled N.G. to a secluded area near the house, where he threatened to rape and kill her. Appellant gestured towards his waist and threatened to shoot her, stating he had a gun. He then pulled down N.G.'s dress, touched her exposed breasts, reached into her underwear, and inserted his finger into her vagina. Appellant removed his pants and forced N.G. to put his penis in her mouth, threatening to shoot her if she

attempted to bite him. Appellant left, but he returned moments later and demanded N.G.'s access numbers to her phone and debit card. He ordered N.G. to get on the ground and left the scene. N.G. waited briefly and then grabbed her backpack and ran to her house.

Once inside, N.G. told her roommate, J.D., that she had been robbed and borrowed J.D.'s phone to call 911. J.D. described N.G. as "panicked and petrified" when she entered the house. N.G. had blood on her face and dirt on her legs. She also told J.D. that she had been raped. N.G. spoke to Officer Waddy when he arrived on the scene, and she was transported to the hospital for treatment where she received stitches. N.G. wore a brace on her injured tooth for weeks. When Waddy spoke to N.G. he immediately observed the injuries to her mouth and described her as "emotional" and "flustered." She described her assailant and stated that she had been robbed and assaulted. After the rescue squad began treating her, N.G. reported that she also had been sexually assaulted.

Dr. Jeanne Parrish examined N.G. at the hospital. She testified that N.G. appeared to be in shock and became "a little emotional" as she described the events. Parrish explained that N.G.'s behavior was a "common trauma response." Parrish noted the injuries to N.G.'s tooth, mouth, and legs. Parrish swabbed N.G.'s body for potential DNA evidence. Forensic scientist Caitlyn Ayoub subsequently analyzed the samples and determined that appellant could not be eliminated as a contributor to the blood sample obtained from N.G.'s left inner thigh.

Appellant used N.G.'s credit card at multiple locations that night into the early morning hours of the following day. On the evening of September 20, 2018, the police executed a search warrant at appellant's residence. They found appellant's shoes, which matched footwear impressions from beneath V.M.'s window. They also found clothing matching the clothing described by V.M. and N.G. and discovered N.G.'s credit cards.

Appellant testified that he had sold drugs to N.G. in the past and met her on September 19, 2018 to collect payment. Appellant claimed that N.G. gave him her credit cards because she did not have cash to pay

for the drugs. He further claimed that as he was leaving, N.G. attacked him with a knife and cut his arm. In response, appellant struck N.G.

Although appellant claimed that he had communicated with N.G. by text message that night, an examination of his phone produced no contacts between his number and N.G.'s number. The police also examined security video from the stores where appellant used N.G.'s credit cards and did not see any injury to his arm.

Appellant contends that N.G.'s "testimony was inherently incredible." Specifically, he argues that although N.G. had been "swabbed for foreign DNA, . . . when the results came back, they revealed that there was no evidence of any bodily fluids other than [appellant's] blood." He suggests that this proves that N.G. "was not sexually assaulted and that her testimony is unworthy of belief." He further contends that N.G.'s initial report to Waddy did not include the allegation of a sexual assault and that the "evidence of her demeanor" was contradictory.

"Determining the credibility of witnesses . . . is within the exclusive province of the jury, which has the unique opportunity to observe the demeanor of the witnesses as they testify." Dalton v. Commonwealth, 64 Va. App. 512, 525 (2015) (quoting Lea v. Commonwealth, 16 Va. App. 300, 304 (1993)) (alteration in original). "When 'credibility issues have been resolved by the [fact finder] in favor of the Commonwealth, those findings will not be disturbed on appeal unless plainly wrong.'" Towler v. Commonwealth, 59 Va. App. 284, 291 (2011) (quoting Corvin v. Commonwealth, 13 Va. App. 296, 299 (1991)).

"A legal determination that a witness is inherently incredible is very different from the mere identification of inconsistencies in a witness' testimony or statements. Testimony may be contradictory or contain inconsistencies without rising to the level of being inherently incredible as a matter of law." Kelley v. Commonwealth, 69 Va. App. 617, 626 (2019). "Consequently, as Virginia law dictates, '[p]otential inconsistencies in testimony are resolved by the fact finder,' not the appellate court." Id. (quoting Towler, 59 Va. App. at 292). "[T]here can be no relief" in this Court if a witness testifies to facts "which, if true, are sufficient" to support the conviction "[i]f the trier of the facts" bases its decision "upon that testimony."

Smith v. Commonwealth, 56 Va. App. 711, 718-19 (2010) (quoting Swanson v. Commonwealth, 8 Va. App. 376, 379 (1989)).

Here, the jury accepted N.G.'s trial testimony and rejected appellant's version of the events. "In its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt." Speller v. Commonwealth, 69 Va. App. 378, 388 (2018). In addition, other evidence corroborated N.G.'s testimony. N.G.'s injuries were consistent with her account of the attack. Although she first reported the robbery, she quickly informed the police about the sexual assault. She also immediately told her roommate about it when she returned to her house and called for help. Further, the evidence established that N.G.'s demeanor was consistent with a person who had experienced a traumatic event.

"Merely because [a] defendant's theory of the case differs from that taken by the Commonwealth does not mean that every reasonable hypothesis consistent with his innocence has not been excluded. What weight should be given evidence is a matter for the [factfinder] to decide." Edwards v. Commonwealth, 68 Va. App. 284, 301 (2017) (quoting Haskins v. Commonwealth, 44 Va. App. 1, 9 (2004)). The appellate court asks only whether a reasonable finder of fact could have rejected the defense theories and found the defendant guilty beyond a reasonable doubt. Jordan v. Commonwealth, 273 Va. 639, 646 (2007). This Court's deference to the fact finder "applies not only to findings of fact, but also to any reasonable and justified inferences the fact-finder may have drawn from the facts proved." Turner v. Commonwealth, 65 Va. App. 312, 331 (2015) (quoting Sullivan v. Commonwealth, 280 Va. 672, 676 (2010)). From the evidence presented, the jury reasonably and permissibly rejected appellant's claims that N.G. attacked him with a knife and voluntarily gave him her phone and credit cards as payment for drugs. Appellant claimed that he struck N.G. once after she attacked him, but her injuries indicate a more sustained attack. Further, the videos from the stores where appellant used N.G.'s credit cards do not depict a cut on his arm.

Finally, "a conviction for . . . [a] sexual offense[] may be sustained solely upon the uncorroborated testimony of the victim." Wilson v. Commonwealth, 46 Va. App. 73, 87 (2005). The jury accepted N.G.'s

testimony and rejected appellant's hypothesis of innocence. The record supports the jury's credibility determination. N.G.'s testimony combined with the other evidence presented at trial proved that appellant committed the charged offenses. The Commonwealth's evidence was competent, was not inherently incredible, and was sufficient to prove beyond a reasonable doubt that appellant was guilty of robbery, object sexual penetration, sodomy, and credit card larceny.

II. Appellant contends that the trial court "erred in denying [his] request to appoint counsel to represent him at sentencing."

Following appellant's arrest, the trial court appointed him counsel. On March 14, 2019, counsel moved to withdraw stating there was a breakdown in communication. The trial court granted the motion and appointed new counsel. In July 2019, appellant's new counsel also moved to withdraw, and the trial court replaced her with a third appointed attorney, Anthony Martin. On October 3, 2019, Martin filed a motion to withdraw, alleging a breakdown in communication and trust. The trial court found that appellant had waived his right to counsel and allowed him to choose between being represented by Martin at trial or representing himself with Martin as standby counsel. Appellant chose to be represented by Martin. At a January 28, 2020 hearing, Martin again moved to withdraw. Martin explained that appellant insisted on raising new claims which Martin deemed were without merit and "frivolous." The trial court granted Martin's motion, finding that there was not "any fault or problem with the attorneys," and instead, "the fault or problem is with" appellant. The trial court found that appellant had constructively waived his right to counsel, and the court appointed an attorney to act as standby counsel for the February 10, 2020 sentencing hearing.

Appellant argues that he was denied his right to counsel. "His constitutional challenge raises a question of law that we review *de novo*." Walker v. Commonwealth, 71 Va. App. 665, 672 (2020). "In pertinent part, the Sixth Amendment to the United States Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defen[s]e.'" Id. "The Sixth Amendment right to counsel also 'implicitly embodies a "correlative right to dispense with a lawyer's help[,]"' and thus, it can be waived." Id. (quoting Faretta v. California, 422 U.S. 806, 814 (1975)).

"Due to the fundamental nature of the right, the burden of proving waiver falls upon the Commonwealth." Id. However, the waiver of the right to counsel need not be express; it may be inferred from a defendant's conduct. McNair v. Commonwealth, 37 Va. App. 687, 696 (2002) (*en banc*).

Here, the record makes clear that the trial court provided appellant with more than "a 'fair opportunity' to representation by counsel." Bailey v. Commonwealth, 38 Va. App. 794, 803 (2002). The trial court appointed three separate attorneys to represent appellant throughout the proceedings. Appellant was uncooperative and uncommunicative with his counsel, hindering their ability to represent him. Before trial, appellant stated his dissatisfaction with his third attorney, but agreed to proceed to trial with him. After trial, appellant continued his unhelpful behavior causing a breakdown in the attorney-client relationship. The trial court properly found that appellant had effectively waived his right to counsel through his conduct. The trial court repeatedly provided appellant the opportunity to be represented by counsel and even assigned standby counsel to assist him at the sentencing hearing. Accordingly, we find no error with the trial court's ruling.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

The trial court shall allow Bryan J. Jones, Esquire, court-appointed counsel for the appellant, a fee of $300 and also counsel's necessary direct out-of-pocket expenses. The Commonwealth shall recover of the appellant the costs in this Court and in the trial court, which costs shall include the fee of $100 previously awarded to David S. Randle, Esquire, in addition to is costs and necessary direct out-of-pocket expenses.

This Court's records reflect that Bryan J. Jones, Esquire, is counsel of record for appellant in this matter.

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Attorneys' fees $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty K P. Ring

Deputy Clerk

Appendix B

VIRGINIA: - IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, ON THE LAW SIDE THEREOF, HELD ON FRIDAY, NOVEMBER 8TH, 2019.

Present: - Honorable RICHARD E. MOORE, Judge

COMMONWEALTH OF VIRGINIA Plaintiff

Vs.

Case No. 19-102-01 - Robbery
Case No. 19-102-02 - Obtain Credit Card Number-Larceny
Case No. 19-102-03 - Object Sexual Penetration By Force
Case No. 19-102-05 - Sodomy
Case No. 19-102-12 - Peeping Into Dwelling

JOWELL LEGENDRE Defendant
Date of Birth: 10/17/88

On this the 8th day of November 2019 came the Commonwealth of Virginia by its Attorney, Joseph Platania and Deputy Attorney, Areshini Pather, and the defendant, Jowell Legendre, appeared before the Court in the custody of the Sheriff of this City; likewise appeared Anthony Martin, his appointed attorney.

All of the jurors who were present when the Court recessed on Thursday, November 7th, 2019, were again present.

Defense counsel renewed and further argued his motion strike the evidence as to Case Nos. 19-102-01, 19-102-02, 19-102-03 and 19-102-05. The Court denies the motion for reasons stated fully on the record, and notes defense counsel's exception.

Thereupon the jurors aforesaid, having fully heard the evidence, having received the instructions of the Court and having fully heard the arguments of counsel, retired to their room to consider of their verdict and the jury returned into Court with the following verdict, to-wit:

The defense attorney requested polling of the jury, with a unanimous agreement with the jury's verdict.

Pursuant to the verdict of the jury, the Court adopts said verdict and finds the defendant **GUILTY**, in the City of Charlottesville of the following:

CHARGE NUMBER	OFFENSE DESCRIPTION INDICATOR (F/M)	OFFENSE DATE	VA.CODE SECTION	VA CRIME CODE
19-102-01	Robbery (F)	09/19/19	18.2-58	ROB1215F9
19-102-02	Obtain Credit Card No.-Larceny (F)	09/19/19	18.2-192	FRD2360F9
19-102-03	Object Sexual Penetration By Force(F)	09/19/19	18.2-67.2	RAP1135F9
19-102-05	Sodomy (F)	09/19/19	18.2-67.1	RAP1132F9
19-102-12	Peeping (M)	09/19/19	18.2-130	TRS5718M1

And the Court, doth before fixing or imposing sentence on all five (5) charges, direct a Probation and Parole Officer for this the Ninth District of Virginia to continue investigation of this case and report back to this Court as directed by law.

The defendant shall allow a DNA sample to be taken for analysis pursuant to Section 19.2-310.2 of the Code of Virginia, 1950, as amended.

The Court continues these matters, as to Case Nos. 19-102-01, 19-102-02, 19-102-03, 19-105-05 and 19-102-12, for sentencing, until 10:30 a.m. on January 30th, 2020.

And the defendant was remanded to jail.

Enter: Richard E. Moore

Date: 12/4/19

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Appendix C

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 1st day of February, 2022.

Jowell Travis Legendre, Appellant,

against Record No. 210445
Court of Appeals No. 0642-20-2

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

The Circuit Court of the City of Charlottesville shall allow court-appointed counsel the fee set forth below and also counsel's necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this Court and in the courts below.

Costs due the Commonwealth
by appellant in Supreme
Court of Virginia:

Attorney's fee $850.00 plus costs and expenses

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By: Julie Hagan

Deputy Clerk

Additional material from this filing is available in the Clerk's Office.