

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ERIC THOMAS COCHRAN	:	
	:	
Appellant	:	No. 2047 EDA 2025

Appeal from the Judgment of Sentence Entered June 11, 2025
In the Court of Common Pleas of Northampton County Criminal Division
at No(s): CP-48-CR-0002997-2023

BEFORE: NICHOLS, J., McLAUGHLIN, J., and KING, J.

MEMORANDUM BY McLAUGHLIN, J.: **FILED SEPTEMBER 17, 2026**

Eric Thomas Cochran appeals from the judgment of sentence entered following his conviction for indecent assault without consent.¹ He challenges the admission of evidence and the denial of his request for a jury instruction. We affirm.

Cochran is a physician and his conviction stems from his encounter with a patient, L.Z.-G. She alleged that Cochran touched her inappropriately during appointments. Cochran was charged criminally, and before trial, he made several motions. Relevant here, he sought sanctions and/or an adverse-inference instruction because a portion of a cell phone recording that L.Z.-G. had made of an appointment with Cochran was missing. **See** Defendant's Omnibus Pretrial Motion, filed 2/20/24. Cochran claimed that he suffered

¹ 18 Pa.C.S.A. § 3126(a)(1).

prejudice from the failure of the police to preserve the entirety of cell phone recording because 1) “it is referenced in the criminal complaint as one of the factors leading to Dr. Cochran’s arrest”; 2) “its mere existence tends to unfairly stigmatize Dr. Cochran”; and 3) “the defendant cannot refute its purported content because it no longer exists.” ***Id.*** at ¶ 24.

The court held a hearing on the motion where it heard from the victim and the affiant on the criminal complaint, Detective Michael Munch. The court aptly summarized the evidence as follows:

[L.Z.-G.] testified that in early 2023, she was employed as a material handler at McKesson, in a position which required her to be able to lift packages of approximately 35 to 40 pounds. [L.Z.-G.] injured her back at work, and was provided a list of medical providers by her employer in order to pursue workers’ compensation benefits. [L.Z.-G.] elected to be seen at Concentra, the first urgent care facility on the list. [L.Z.-G.] was seen by Defendant, Dr. Eric Cochran, at her first visit at Concentra. [L.Z.-G.] was prescribed physical therapy and instructed to use a heating pad on her back. [L.Z.-G.] returned to [Dr. Cochran] for a second visit, at which time he assessed her pain, and directed her to complete additional physical therapy. [L.Z.-G.] testified that she saw [Dr. Cochran] a total of six times.

On February 22, 2023, at [L.Z.-G.’s] fourth visit, [Dr. Cochran] began to touch and massage her buttocks area. [L.Z.-G.] testified that she became uncomfortable. [Dr. Cochran] was touching [L.Z.-G.’s] buttocks under her clothes and beneath her underwear. [Dr. Cochran] did not remove [L.Z.-G.’s] pants at that time. [L.Z.-G.] questioned [Dr. Cochran] as to why he was touching her buttocks and [Dr. Cochran] stated that there is a nerve that extends down the middle of the back and down the legs. [L.Z.-G.] testified that she accepted the explanation but still felt uncomfortable and “weird” about it.

On February 27, 2023, at [L.Z.-G.'s] fifth visit, [Dr. Cochran] again began touching her buttocks area while she was [lying] on the examination table, however, he also placed his hands in her "butt crack" and touched her anus. [L.Z.-G.] testified that [Dr. Cochran] did not touch her vaginal area during the fifth visit because she had told [Dr. Cochran] she was menstruating. [L.Z.-G.] did not say anything when [Dr. Cochran] touched her anus, but knew "something was going on."

Following the fifth appointment with [Dr. Cochran], [L.Z.-G.] spoke to Ricardo Ortiz, the person responsible for managing work-related injuries for her employer, about her concerns. Mr. Ortiz advised [L.Z.-G.] to record her next appointment with [Dr. Cochran].

[L.Z.-G.'s] sixth visit with [Dr. Cochran] occurred on March 6, 2023. During the March 6, 2023 appointment, [Dr. Cochran] pulled [L.Z.-G.'s] pants and underwear down to her knees, touched her vaginal area, and inserted a finger in her anus. [Dr. Cochran] climbed on top of [L.Z.-G.], while she was [lying] on the exam table. [L.Z.-G.] confronted [Dr. Cochran] and told him he could lose his job for what he was doing to her. In response, [Dr. Cochran] told [L.Z.-G.] that he "liked her" and wanted to see her "out of the office." [L.Z.-G.] told him no, and left the office. [L.Z.-G.] had set up her cellphone to video record the appointment. [L.Z.-G.] returned to work and told her employer what had happened. [L.Z.-G.] also reported the incident to her husband and to the police department closest to her work location. [L.Z.-G.] was advised she had to go to the police department where the incident occurred, the Colonial Regional Police Department, and she went there the day following her last appointment with [Dr. Cochran.]

[L.Z.-G.] showed the entirety of the video recording, which was approximately 40 to 45 minutes, to the first officer she spoke with at the Colonial Regional Police Department. [L.Z.-G.] attempted to send the video to the detective through WhatsApp, however, she was unsuccessful because the file was too large. [L.Z.-G.] was able to send a shorter clip of the video, approximately three minutes long, through WhatsApp. When she sent the short clip, the full-length video recording was deleted. [L.Z.-G.] testified that the video exhibit, Commonwealth Exhibit 1,

was an accurate depiction of what occurred during her last visit with [Dr. Cochran].

While [Dr. Cochran] was on top of [L.Z.-G.] on the exam table, he was kissing her ear and cheek. [Dr. Cochran] was not wearing medical gloves during the March 6th visit, or any of the visits with [L.Z.-G.].

On March 7, 2023, Detective Michael Munch of the Colonial Regional Police Department was contacted by Officer Kulp of the same department, after Officer Kulp had initially watched the whole video [L.Z.-G.] recorded.² Det[ective] Munch was unavailable on March 7, and asked [L.Z.-G.] to return the following day. On March 8, 2023, Det[ective] Munch interviewed [L.Z.-G.], and attempted to transfer the video recording from [L.Z.-G.'s] phone to a police department computer. The video transfer was unsuccessful. The same day, [L.Z.-G.] attempted to send the video to Det[ective] Munch, however, the file was too large. [L.Z.-G.] was only able to send the shortened clip from the video.

In an attempt to recover the full-length video, Det[ective] Munch took [L.Z.-G.'s] phone to Petzold Forensics Lab to extract the data. The forensics lab was unable to recover the full-length video. Det[ective] Munch also obtained a court order to gain access to the iCloud account for [L.Z.-G.'s] phone. The full-length video was unable to be recovered from the iCloud account. Det[ective] Munch consulted with a digital forensic analyst who was unable to provide any other means for recovering the full-length video recording.

Opinion Sur Omnibus Pretrial Motions ("Opinion"), filed 7/29/24, at 1-5 (paragraph numbers and citations to notes of testimony omitted).

The court denied Cochran's motion. The court concluded that "[t]here is no basis to conclude that the failure to preserve the full-length recording was intentional, in bad-faith or the fault of the police." ***Id.*** at 10-11. It determined

² At trial, Officer Kulp testified that he did not watch the entire video.

that the police “were diligent in attempting to preserve and then retrieve the recording” and that Cochran failed to establish prejudice that would “warrant any sanction or adverse inference.” ***Id.*** at 11. The court pointed out that the victim had tried to send the full-length video to Detective Munch to no avail, and that Detective Munch made multiple attempts to retrieve the full-length video by seeking assistance from the forensics laboratory, trying to retrieve content from the victim’s iCloud account, and attempting to download it to the police computer. ***See id.***

As trial approached, the Commonwealth filed a motion *in limine* Pursuant to Rule 404(b) to admit the testimony of a former patient of Dr. Cochran’s, S.F. The Commonwealth alleged that S.F. had three visits with Dr. Cochran in 2008. At her second visit, “[Dr. Cochran] laid [S.F.] face down on the table and manipulated her back focusing on her buttocks and legs.” Motion *in Limine* Pursuant to Rule 404(b), filed 10/31/24, at ¶ 6. On her third visit, the following occurred:

[S.F.] described that [Dr. Cochran] laid her face down again and this time, when he manipulated her back he also touched her vagina and anus over her clothes. She also described that [Dr. Cochran] had an erection, which rubbed against her leg. When she got up from the table, [Dr. Cochran] grabbed her and hugged her and then grabbed her hand and placed it on his erection.

Id. The Commonwealth requested that S.F. be permitted to testify to the above acts under Rule 404(b)(2) and maintained that the acts showed “motive, opportunity, intent, plan, knowledge, and absence of mistake.” ***Id.*** at ¶ 9. The court granted the motion, stating that the evidence was “relevant

to demonstrate motive, opportunity, intent, preparation, plan, knowledge, identity, lack of accident and/or absence of mistake.” Order of Court, filed 11/15/24. Despite this ruling, Cochran later filed his own motion *in limine* to exclude S.F.’s testimony under Rule 404(b)(2). **See** Motion, filed 12/10/24. The court denied his motion. **See** Order, filed 12/17/24.

At Cochran’s jury trial, the victim and Detective Munch testified consistently with their testimony at the pretrial motion hearing, and S.F. testified consistently with the Commonwealth’s proffer in its Rule 404(b) motion. She testified that she became a patient of Dr. Cochran’s in 2008 to get help with anxiety while she recovered from alcohol addiction. N.T., Trial – Volume II, 3/4/25, at 96-97. At the time, Dr. Cochran specialized in addiction and worked at St. Luke’s University Health Network. **Id.** at 97, 102. S.F. testified that during her second visit, Dr. Cochran massaged her buttocks “over top of [her] clothing.” **Id.** at 98-99. S.F. stated that during her third visit, Dr. Cochran touched her vagina, again over her clothing. She testified that at one point he leaned over her and that she could feel that he had an erection. **Id.** at 99. She also testified that once she stood up, Dr. Cochran pulled her close, hugged her, and placed her hand on his erection. **Id.** at 100. During each visit, Dr. Cochran had S.F. lie face down on a table. **Id.** at 98-99.

During cross-examination, S.F. admitted that she did not report Dr. Cochran’s actions to the police until 11 years following the incident. **Id.** at 103-04. Defense counsel also attempted to ask S.F. about a letter she received from St. Luke’s after reporting the incident. **Id.** at 105. The

Commonwealth objected that the contents of the letter were hearsay. ***Id.*** at 105-06. Defense counsel responded that he had no way of contacting the investigator who was involved with the case because the investigator no longer worked for St. Luke's. ***Id.*** at 106-07. The court sustained the objection but permitted defense counsel to ask S.F. whether she received a letter from St. Luke's but did not permit counsel to ask about the content of the letter. ***See id.*** at 108-12. At the close of trial, the court gave a limiting instruction concerning S.F.'s testimony. ***See*** N.T., Jury Charge & Verdict, 3/5/25, at 9 (explaining to jury that testimony should be considered for "limited purpose" such as showing intent or absence of mistake).³

The jury found Cochran guilty of one count of indecent assault. The court sentenced Cochran to a term of incarceration of four months to 23 months and 29 days. Cochran filed a post-sentence motion, which the court denied. This timely appeal followed.

Cochran raises the following issues:

- A. Did the trial court abuse its discretion by denying [Cochran's] request for sanctions and/or adverse inference jury instruction with regard to edited video footage where (a) the video was central to the Commonwealth's case (b) the Commonwealth could have preserved the unedited video (c) the complaining witness

³ The notes of testimony from the jury charge and the verdict are not in the certified record. However, a copy is included in the reproduced record. Because there is no dispute as to the accuracy of the copy in the reproduced record, we consider it. ***See Commonwealth v. Holston***, 211 A.3d 1264, 1276 (Pa.Super. 2019) (*en banc*) (stating "where the accuracy of a document is undisputed and contained in the reproduced record, [this Court] may consider it").

extracted only the most damning snippet and (d) the lack of a counterbalance was unfairly prejudicial to [Cochran's]?

- B. Did the trial court abuse its discretion by denying [Cochran's] motion to exclude 404(b)(2) testimony of prior bad acts where (a) the witness's allegation dated back to 2008 (b) the passage of time and lack of contemporaneous investigation hampered [Cochran's] ability to rebut the claim and (c) the trial court did not balance the probative value of this evidence against its inherently prejudicial effect?

Cochran's Br. at 4 (suggested answers omitted).

Cochran first maintains that the court erred in refusing to give an adverse-inference instruction for the failure to preserve the entire cell phone video.⁴ Cochran states that if "a party destroyed relevant evidence while litigation is pending," the opposing party may obtain an instruction that the jury may infer "that the destroyed evidence would have been unfavorable to the position of the offending party." *Id.* at 28. Cochran states when determining whether sanctions are appropriate for the spoliation of evidence, that the court must consider the following:

(a) the degree of fault of the party who altered or destroyed the evidence (b) the degree of prejudice suffered by the opposing party and (c) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party, and where the offending party is seriously at fault, will serve to deter such conduct by others in the future.

⁴ Although Cochran's first question presented asks whether the court erred by not granting "sanctions and/or [an] adverse inference jury instruction," he makes no argument that the court should have imposed any "sanction" other than an adverse-inference instruction.

Id. at 28-29 (citing **Mt. Olivet Tabernacle v. Edwin L. Wiegand Div., Emerson Elect. Co.**, 781 A.2d 1263 (Pa.Super. 2001)).

Cochran claims the court should have given the instruction because the Commonwealth was “inarguably at fault for failing to preserve” the video. **Id.** at 29. He notes that Officer Kulp did not view the entire video and did not attempt to preserve it because he lacked training. Cochran also points out that Detective Munch allowed the victim to leave without first retrieving the entire video footage. Thus, he claims “[t]he fault for losing the unaltered footage belongs to the police and, by extension, the Commonwealth.” **Id.** at 31.

Additionally, Cochran asserts that the court’s reliance on the absence of bad faith on the part of the Commonwealth or the police was erroneous because it placed “undue emphasis on the presence or absence of good faith.” **Id.** at 32. He alleges that the “condensed 3-minute and 20-second segment” lacked context and increased Cochran’s chances of being “unfairly convicted based on a modified and self-selected excerpt of the video.” **Id.** at 33. Cochran maintains that an adverse-inference instruction would have “‘balanced the scales’ and given the defense a more robust legal basis to challenge the video excerpt,” as well as the Commonwealth’s whole case. **Id.** at 34.

The Commonwealth responds that, under **Commonwealth v. Feese**, 79 A.3d 1101, 1108 (Pa.Super. 2013), if the defendant cannot show that the loss or destruction of evidence prejudiced him, then he must show that the

failure to preserve it was the product of bad faith. The Commonwealth maintains that Cochran failed to meet this standard.

The trial court denied the request for adverse-inference instruction because there was “no basis to conclude that the failure to preserve the full-length recording was intentional, in bad-faith, or the fault of the police.” Opinion at 10-11. The court also rejected Cochran’s claim that his ability to cross-examine the victim was “somehow hampered by what the video does not show” as “unfounded.” **Id.** at 11.

We review the denial of a jury instruction for an abuse of discretion. **See Commonwealth v. Sow**, 333 A.3d 698, 702 (Pa.Super. 2025). An abuse of discretion exists where “the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.” **Commonwealth v. Alexander**, 355 A.3d 945, 954 (Pa.Super. 2026) (citation omitted).

“Spoliation of evidence is the failure to preserve or the significant alteration of evidence for pending or future litigation.” **Parr v. Ford Motor Co.**, 109 A.3d 682, 701 (Pa.Super. 2014) (*en banc*) (cleaned up). The doctrine of spoliation is “broadly applicable to cases where ‘relevant evidence’ has been lost or destroyed.” **Mt. Olivet**, 781 A.2d at 1269. Where there is spoliation of evidence, the court must consider: “(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party.” **Marshall v. Brown’s IA, LLC**,

213 A.3d 263, 268 (Pa.Super. 2019) (citation omitted). The court has discretion in determining the sanction, if any, that should be imposed. **See id.** at 267-68. Permissible sanctions include “entry of judgment against the offending party, exclusion of evidence, monetary penalties such as fines and attorney fees, and adverse instructions to the jury.” **Hammons v. Ethicon, Inc.**, 190 A.3d 1248, 1281 (Pa.Super. 2018).

A party’s bad faith is irrelevant to the consideration a spoliation claim. **Marshall**, 213 A.3d at 272. However, in a criminal case, the prosecution violates due process if, in bad faith, it fails to preserve evidence that would be “potentially useful” to the defense. **Commonwealth v. Snyder**, 963 A.2d 396, 404 (Pa. 2009) (citing **Illinois v. Fisher**, 540 U.S. 544, 549 (2004)); **see also Feese**, 79 A.3d at 1106, 1115 (rejecting claim that the prosecution violated due process by destroying evidence in bad faith).

Because Cochran has limited his argument to a “straight” spoliation claim, and has not claimed a due process violation under **Snyder**, we review his claim under the three-factor spoliation standard. **See Commonwealth v. Underwood**, No. 1891 WDA 2019, 2020 WL 4746006 at *3-4 (Pa.Super. filed August 17, 2020) (unpublished mem.) (analyzing claim that failure to preserve video amounted to spoliation under three-factor spoliation standard).

Regarding the first factor, the court determined that “the police were diligent in attempting to preserve and then retrieve the recording at issue.” Opinion at 11. For the second factor, the court found that Cochran failed to

“sufficiently demonstrate[] prejudice to warrant any sanction or adverse inference.” **Id.** The court did not address the third factor.

We find no abuse of discretion. The court found that the police were not at fault and that Cochran’s claim that he was unable to properly cross-examine the victim was unfounded. These findings are supported by the record. The court heard testimony from the police and the victim regarding the circumstances surrounding what was done to preserve and retrieve the recording. Additionally, Cochran notably was able to ask questions to demonstrate that the video was not the entire recording of the visit and to show what could not be seen on the video. N.T., Trial – Volume II at 78-84. He has not identified anything he was unable to ask about because of the missing portion of the video.

Next, Cochran claims the court erred in denying his motion to preclude the Commonwealth from presenting Rule 404(b) evidence. He argues the court’s order did not include an analysis of weighing the probative value of the evidence against its prejudicial effect. He claims that this failure of the court makes its ruling “incomplete and therefore inaccurate.” Cochran’s Br. at 36. He alleges “the trial court was obligated to undertake a careful analysis before allowing [S.F.] to testify about her outdated and uncharged accusations.” **Id.** at 38 (citing **Commonwealth v. Bradley**, 364 A.2d 944 (Pa.Super. 1976) and **Commonwealth v. Hude**, 390 A.2d 183 (Pa.Super. 1978)). He maintains that her testimony had the potential “to inflame the jury’s emotions and generate a verdict on improper grounds.” **Id.** He further claims that the

amount of time between S.F.'s allegations and the instant case prevented him from being able to investigate her claims. Specifically, he notes that he was unable to impeach S.F. with the investigation results from St. Luke's. Cochran also claims that the court failed to give a contemporaneous cautionary instruction to the jury to offset the Rule 404(b) testimony.

We review the grant of a motion *in limine* for an abuse of discretion. **See Alexander**, 355 A.3d at 953. "[T]o the extent we are required to review the trial court's conclusions of law, our standard of review is *de novo* and our scope of review is plenary." **Commonwealth v. Cook**, 231 A.3d 913, 919 (Pa.Super. 2020) (quotation marks and citation omitted).

"Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Pa.R.E. 404(b)(1). Evidence of another crime, wrong, or act may be admitted for the purpose of "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." **Id.** at 404(b)(2). For criminal matters, the evidence is admissible only "if the probative value of the evidence outweighs its potential for unfair prejudice." **Id.** When weighing the potential prejudice against the probative value, "[s]uch weighing and the general consideration of the admissibility of evidence is a discretionary ruling which trial courts routinely engage in mentally." **Commonwealth v. Hairston**, 84 A.3d 657, 667 (Pa. 2014). The court is not required to "record these mental deliberations on the record." **Id.**

To the extent Cochran argues the court erred in failing to give a contemporaneous cautionary instruction to the jury before S.F. testified, this claim is waived since Cochran did not request such an instruction. **See Commonwealth v. Wilson**, 147 A.3d 7, 16 (Pa.Super. 2016) (concluding claim that court failed to give limiting instruction waived where counsel failed to request contemporaneous instruction).

The court did not abuse its discretion in granting the Commonwealth's motion. It concluded that S.F.'s testimony regarding her visits with Dr. Cochran as a patient was "relevant to demonstrate motive, opportunity, intent, preparation, plan, knowledge, identity, lack of accident and/or absence of mistake." Order of Court, filed 11/15/24. Like the victim in the instant case, S.F. was a patient of Dr. Cochran and experienced inappropriate touching by Dr. Cochran during her visits. Additionally, like the victim, S.F. testified that the inappropriate touching did not begin until after her initial visit with Cochran. Thus, the evidence was relevant to prove absence of mistake under Rule 404(b)(2). **See Commonwealth v. Gilliam**, 249 A.3d 257, 273 (Pa.Super. 2021) (concluding trial court did not err in permitting Commonwealth to introduce 404(b) prior bad acts for purposes of establishing common plan and lack of mistake where testimony was substantially similar to the victim, both witnesses were female massage clients of defendant, and had been inappropriately touched after initial visits with defendant); **Commonwealth v. Tyson**, 119 A.3d 353, 360-363 (Pa.Super. 2015) (*en banc*) (reversing denial of Commonwealth's motion *in limine* to introduce

defendant's prior conviction for rape nine years before instant charge of rape, where Commonwealth sought to admit the conviction for purpose of establishing absence of mistake and common plan/scheme; Court acknowledged similarities between facts underlying the charge of rape in the instant case and facts of defendant's rape conviction including that both victims were African American females in their twenties, guests at defendant's home, lost consciousness, and awoke to appellant having vaginal intercourse with them). Any unfair prejudice created by S.F.'s testimony was cured by the court's curative instruction that the purpose of her testimony was limited to absence of mistake or intent. **See** N.T., Jury Charge & Verdict, at 9; **Commonwealth v. Goods**, 265 A.3d 662, 672 (Pa.Super. 2021) ("It is well-settled that jurors are presumed to follow the trial court's cautionary instructions"). Additionally, the court was not required to record its mental deliberations of weighing the potential prejudice of the testimony against its probative value. **Hairston**, 84 A.3d at 667.

Furthermore, because the evidence of Cochran's guilt was overwhelming, any error in admitting S.F.'s testimony was at most harmless error. An error is deemed harmless if the record shows:

- (1) The error did not prejudice the defendant or the prejudice was *de minimis*; or
- (2) The erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or

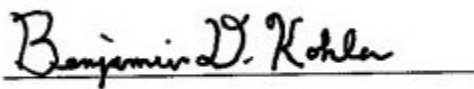
- (3) The properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.

Id. at 671-72 (citation omitted). In a criminal case, we must find harmless error beyond a reasonable doubt and may invoke the harmless error doctrine *sua sponte*. **See Commonwealth v. Hamlett**, 234 A.3d 486, 492 (Pa. 2020).

The victim provided detailed testimony about each visit with Cochran. The Commonwealth also admitted the video recording of her last visit with Cochran. Although the video did not show the beginning and end of the visit, the video corroborated the victim's testimony about what occurred during a portion of the visit, namely that Cochran climbed on top of her, while moving back and forth against her body, and kissing her ear. **See** N.T., Volume II at 45. The victim's testimony and the video evidence were properly admitted and provided overwhelming evidence of Cochran's guilt. Thus, any prejudicial effect from S.F.'s testimony was insignificant and could not have contributed to the verdict.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/17/2026