

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 107694
ARNALDO ORTIZ-VEGA,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 18, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-624229-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Michael Lisk, Assistant Prosecuting
Attorney, *for appellee*.

Myriam A. Miranda, *for appellant*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} Defendant-appellant Arnaldo Ortiz-Vega appeals from his conviction for several counts of rape and two counts of kidnapping. After a thorough review of the record and the law, we find Ortiz-Vega's convictions are not against the manifest weight of the evidence, the trial court did not err in allowing the state to cross-

examine Ortiz-Vega on his previous marriages or his sexual activity with the victim while married, and the trial court made the requisite consecutive-sentence findings and his consecutive sentence is supported by the record. We therefore affirm.

Procedural History

{¶ 2} Ortiz-Vega was charged in a multiple-count indictment concerning several incidents with W.Z., Ortiz-Vega's wife, in October 2017. The indictment charged as follows: Count 1 — rape in violation of R.C. 2907.02(A)(2) (digital penetration); Count 2 — rape in violation of R.C. 2907.02(A)(2) (vaginal intercourse); Count 3 — kidnapping in violation of R.C. 2905.01(A)(4); Count 4 — rape in violation of R.C. 2907.02(A)(2) (vaginal intercourse); Count 5 — rape in violation of R.C. 2907.02(A)(2) (cunnilingus); Count 6 — rape in violation of R.C. 2907.02(A)(2) (digital penetration); and Count 7 — kidnapping in violation of R.C. 2905.01(A)(4). Both kidnapping counts included a sexual motivation specification in violation of R.C. 2941.147(A).

{¶ 3} A jury trial commenced on July 10, 2018. The state's witnesses included: the victim, W.Z.; the victim's friend Milcarleny Lizardo; sexual assault nurse examiner ("SANE") Amber Pierce-Smith; and W.Z.'s treating physician Dr. Joel Escobedo. Ortiz-Vega testified on his own behalf. After the close of the state's evidence, the state moved to dismiss the rape charge in Count 4, which the court granted. The court then renumbered the indictment to include six counts: Count 1 — rape; Count 2 — rape; Count 3 — kidnapping; Count 4 — rape; Count 5 — rape; and Count 6 — kidnapping.

{¶ 4} On July 13, 2018, the jury returned a verdict of guilty on all counts. The court held a sentencing hearing, during which the court merged Count 3 into Counts 1 and 2 and Count 6 into Counts 4 and 5. The state requested that the court sentence on Counts 1, 2, 4, and 5. The court then imposed a sentence as follows: seven years on Counts 1 and 2, to be served concurrently, and eight years on Counts 4 and 5, to be served concurrently. The court ordered the seven-year sentence to be served consecutively to the eight-year sentence for a total of 15 years imprisonment.

{¶ 5} Ortiz-Vega now appeals, assigning three errors for our review.

Assignments of Error

- I. Appellant's convictions are against the manifest weight of the evidence.
- II. The trial court erred when it allowed the use of highly prejudicial and irrelevant evidence over the objection of counsel.
- III. The sentence imposed was not supported by the record and is contrary to law.

Evidence and Testimony at Trial

{¶ 6} W.Z. is from the Dominican Republic. At the time of the trial, she had lived in the United States for almost five years. She came to the United States for work, to visit with family and friends, and to learn the English language. W.Z. testified that she initially came to the United States on a visitor's visa, but when she decided to stay and learn English, she changed her visa to a student visa. She believed, however, that her student visa had expired because she eventually stopped attending school.

{¶ 7} W.Z. was a pharmacist in the Dominican Republic, and she explained that she came to the United States to attend a medical exhibition, but she later decided to attend school. She initially visited her friend, Milcarleny Lizardo (“Leny”), in Cleveland, and she began practicing Leny’s faith, that of the Seventh-day Adventists. W.Z. then traveled to Tampa, Florida to stay with her sister but ultimately returned to Leny’s home in Cleveland. W.Z. stated that she was devout in her faith: she attended church regularly; continued living with Leny in order to practice her faith; and participated in many church activities, including teaching the beliefs of the Seventh-day Adventists to children. According to W.Z., her church teaches that unmarried people may not engage in sexual relations with one another or live together.

{¶ 8} W.Z. testified that while living with Leny in December 2016, she met Ortiz-Vega through his hairdresser, who was a friend of Leny’s. According to W.Z., when the hairdresser learned that W.Z. wanted to meet a Christian man, the hairdresser introduced her to Ortiz-Vega, via text. W.Z. stated that prior to meeting Ortiz-Vega in person, the two began texting each other, communicating for approximately one week. On December 15, 2016, Ortiz-Vega invited W.Z. to dinner. W.Z. brought her friend, Leny, to dinner.

{¶ 9} After the initial meeting, W.Z. and Ortiz-Vega continued talking with each other, he began visiting W.Z. at Leny’s house, and approximately two weeks after they met, Ortiz-Vega began attending church with W.Z. Ortiz-Vega asked W.Z. to be his girlfriend. In early 2017, W.Z. traveled to Tampa again to visit her sister.

In February 2017, while in Tampa, Ortiz-Vega made a surprise visit to Tampa and proposed marriage to W.Z., which she accepted.

{¶ 10} They married in August 2017. W.Z. testified that they did not live together prior to their marriage, nor did they engage in sexual relations prior to their wedding night. W.Z. testified regarding sexual relations with her husband during the initial time of her marriage. They had sex approximately once or twice per week, and the sex was consensual and enjoyable. They engaged in oral and vaginal sex as well as digital penetration.

{¶ 11} W.Z. stated that shortly after they married, Ortiz-Vega became argumentative and aggressive, and he would often become angry and yell and scream at her. After one particular fight, she suggested they divorce because she “did [not] expect that being married was going to be [like] this.” Ortiz-Vega responded by saying that he could not accept a divorce. After apologizing for his behavior, according to W.Z., Ortiz-Vega suggested that they begin the immigration paperwork so that they could visit W.Z.’s home country, the Dominican Republic, to celebrate their marriage, as well as visit with his family in Puerto Rico. W.Z. stated that they in fact began her immigration paperwork in September. She further testified that although she knew that Ortiz-Vega had been married previously, she did not learn of his other wives until they filed the immigration paperwork.

{¶ 12} W.Z. testified, however, that after two incidents where Ortiz-Vega “became very, very furious,” she went to Tampa to visit with her sister. Initially, he did not want her to go to Tampa, but he eventually relented. W.Z. stated that Ortiz-

Vega agreed to allow her to go to Tampa on the condition that he would pick her up from Tampa and drive her home when it was time. On October 6, 2017, Ortiz-Vega picked W.Z. up in Tampa and drove her back home to Cleveland.

{¶ 13} According to W.Z., on the night/early morning they returned to Cleveland after the long drive home, Ortiz-Vega began attempting sexual activity with her, but she told him that she did not feel well and did not want to have sex. Despite telling him she did not want to have sex, he began to “suck on [her] breasts brusquely” and perform oral sex on her. She testified that she told him to stop but he did not stop. He ignored her, and after performing oral sex for 15 minutes, he proceeded to have vaginal intercourse with her. W.Z. testified that he continued this behavior early the next morning, doing “the same thing he had done before” and “proceed[ing] to have sex” with her again, despite her protests.

{¶ 14} She further testified that Ortiz-Vega’s unwanted sex “continu[ed] every single day [thereafter]. This would happen all the time. It was nighttime, during the day, in the mornings, at night, * * * all the time. It became more time, oral sex * * * was [for] even longer. * * * It was just constant sex.” She testified that he had sex with her against her will every morning before he left for work. W.Z. testified that he performed oral sex on her for 30 minutes to one-hour intervals, he had vaginal intercourse with her, and he digitally penetrated her. She explained that he performed all of these acts despite the fact that she repeatedly told him to stop. According to W.Z., at one point, Ortiz-Vega began to “push all of his weight on top of me to such an extent that * * * he was suffocating me.” W.Z. testified that “[e]very

time he finished, he would * * * whisper in my ear that he was the only person that loved me and not to forget that [and] that everything that happened there in the house was something that had to stay there amongst ourselves and not to [tell] anyone because we were a couple.”

{¶ 15} W.Z. testified that she began experiencing severe pain and irritation in and around her vagina from the repeated sex. She explained that her clitoris was swollen and “peeling.” She would tell Ortiz-Vega to stop and that she was in pain, but he did not listen to her. W.Z. began to seek medical attention on multiple occasions, including a visit to MetroHealth Hospital’s urgent care center on October 11, 2017. W.Z. stated that she was told there were no doctors there to assist her, so she purchased on her own a type of cream to apply to her clitoris. She told Ortiz-Vega that the doctor prescribed it for her and that he needed to stop having sex with her while she was using the cream. W.Z. stated that the cream prevented the sex for only two days, after which he continued to have “prolonged, long” oral sex with her and “using his fingers” to penetrate her.

{¶ 16} W.Z. testified that she saw her gynecologist around October 18 or 19, 2017. She explained to the doctor that she had pain in her breast and in her nipples, her lower stomach was swollen, and her clitoris was irritated. W.Z. stated that her doctor diagnosed her with a bacterial infection, prescribed some medicine, and gave her a letter that explained her symptoms and advised her to refrain from any sexual activity for two weeks in order to heal properly. According to W.Z., Ortiz-Vega honored the doctor’s letter for two days; however, after that time period, his

aggression returned and he began to “touch [her] vagina strongly, * * * touch [her] vagina and clitoris again very strongly [and] he started to lift up my blouse and suck strongly on my breasts and [then] on my vagina.”

{¶ 17} W.Z. stated that the next day, she called a social worker, but W.Z. was afraid to “do what [the social worker] told [her]” because she did not know where to go and she felt trapped. She testified that she did not call the police because Ortiz-Vega had previously told her that the reason she married him was for her immigration status. W.Z. explained to him that she married him because she loved him, she cared for him, and she wanted a companion. According to W.Z., Ortiz-Vega told her that was not the way he saw it and “he could go to Immigration” and people would believe him because he was a United States citizen. She stated that Ortiz-Vega ensured that he opened all correspondence from the immigration office.

{¶ 18} W.Z. further testified that the following morning before Ortiz-Vega went to work, his “sexual aggression” returned and was “the strongest,” stating:

He started to touch me hard. So hard with his hand, he touched my clitoris. But I grabbed his hand with my hand and he grabbed my hand and held it down so that I wouldn't grab his hand. And I felt that he wanted to stick his fist, his whole fist into my vagina and to * * * grab [me] by my lower stomach. * * * And he started to grab my lower stomach and he had me immobilized. * * * [At this point] I felt like I didn't have any strength.

{¶ 19} W.Z. testified that during this incident, Ortiz-Vega performed oral sex on her and digitally penetrated her, and she never consented to any of these acts. She explained that after this particular assault, Ortiz-Vega went to work and she stayed in bed because she was in so much “intense” pain that she could not walk.

When she finally made it to the bathroom, she attempted to put water on herself but she could not put water on her “private parts” or in her vagina because “the pain was so huge.” According to W.Z., she then “cried so much” and made the decision to call her friend Leny to take her to the hospital. One day later, W.Z. filed a police report.

{¶ 20} After filing the police report, W.Z. moved back into Leny’s home and eventually filed for a divorce from Ortiz-Vega, which she received in April 2018. W.Z. also applied for “protected status” with the U.S. Citizenship and Immigration Services (“USCIS”) under the Violence Against Women Act in order to become a lawful resident of the United States. W.Z. explained that although she and Ortiz-Vega had already begun the paperwork regarding her immigration status, after having gone to the emergency room for treatment in October due to the assaults, she no longer had any interest in attending the “couple’s interview” with USCIS that was scheduled for November, and she cancelled the appointment. At the time of trial, W.Z. was awaiting approval from the USCIS regarding her application for protected status.

{¶ 21} W.Z.’s friend Leny testified that she became friends with W.Z. in the Dominican Republic where they both previously lived. W.Z. was Leny’s chemistry professor at the university, and she has known W.Z. for ten years. When Leny learned that W.Z. was staying in the United States, she invited W.Z. to visit her in Cleveland. Leny stated that W.Z. became baptized in her church while staying with her.

{¶ 22} Leny stated that W.Z. met Ortiz-Vega through a mutual friend, Ortiz-Vega's hairdresser. Leny testified that she thought W.Z. and Ortiz-Vega had a good relationship in the beginning, but after approximately two weeks into their marriage, W.Z. began to "separate" from Leny and they spoke less frequently. Leny stated that W.Z. was a very private person and did not share much information about her relationship with Ortiz-Vega, but Leny observed that W.Z. seemed sad.

{¶ 23} Leny testified that she accompanied W.Z. to a visit to the urgent care center, a doctor's appointment, and the emergency room, all in the same month. Leny stated that after the emergency room visit, she became aware of the reason for W.Z.'s medical treatment and "what was really going on," and Leny cried.

{¶ 24} SANE nurse Amber Pierce Smith testified that she was the SANE nurse on call at MetroHealth Hospital on the morning of October 26, 2017, and she examined W.Z. Smith stated that W.Z. reported her husband had been forcing her to have sex with him from October 9 through October 26, by placing his hand and penis in her vagina, even when she had told him to stop. Smith testified that W.Z. was anxious, tearful, and appeared to be in pain. Smith stated that during her internal examination of W.Z., she observed "redness and irritation" unlike any other examination she has conducted.

{¶ 25} Dr. Joel Escobedo, an obstetrician/gynecologist, testified concerning his examination of W.Z. on October 18, 2017. He stated that W.Z. presented with complaints of bilateral breast pain and vaginal pain and she reported that she was being sexually abused by her husband. During the exam, Dr. Escobedo observed

bilateral breast tenderness beyond ordinary menstrual pain and a red and irritated clitoris. He also observed that W.Z. was “in a significant amount of distress.” He diagnosed W.Z. with bacterial vaginosis, which is a change in the vaginal flora; vaginal cuff cellulitis, which was evidenced by the redness on the top of the vagina, hairline fissures, tenderness during the pelvic exam, and the presence of a large amount of white blood cells in the vaginal secretions; clitoral irritation; and bilateral breast pain.

{¶ 26} Dr. Escobedo explained that his exam revealed “significant clitoral and vulva irritation” that was “likely because of prolonged and frequent oral stimulation, probably rough stimulation.” He further explained that the vagina appeared to be “traumatized by frequent rough sexual intercourse.” The doctor testified that he wrote a letter for W.Z. in which he “strongly recommended” that W.Z. not have sexual intercourse or stimulation on the clitoris or the breasts for two weeks so that she could properly heal.

{¶ 27} In his own defense, Ortiz-Vega testified on direct examination that he and W.Z. became engaged in February 2017 and married in August 2017. He also testified, however, that he obtained a divorce from a prior wife in July of that same year, shortly before he wed W.Z.

{¶ 28} Ortiz-Vega testified that he and W.Z. only had sex on two occasions — the night they became engaged and two days after their wedding day, on August 9, 2017. He stated that although he and W.Z. were members of the Seventh-day Adventists that prohibits premarital sex, they broke the rules by having sex on the

night of their engagement. He denied ever having abused W.Z. or forcing W.Z. to engage in sex of any kind — digital, oral, or vaginal. He specifically denied having engaged in oral sex because he did not “like to do that,” and he denied having “digital sex” or “hand sex” with W.Z. because “[he doesn’t] do that.”

{¶ 29} Ortiz-Vega also testified that he and W.Z. did not have any fights, with the exception of one “miscommunication,” and he was a courteous husband. He noted in fact that he does not fight; rather, he “talks.” He stated that their marriage was good when W.Z. went to Tampa in September. And according to Ortiz-Vega, when they returned from Tampa, at approximately 3:00 in the morning of October 9, 2017, W.Z. took a shower and rested, and he unpacked the car. He stated that W.Z. told him she was not feeling well on the return ride. He stayed up because he had to get up at 5:00 a.m. to go to work. He testified that he left the house at 5:30 a.m., to meet his coworkers at the coffee shop by 7:00 a.m., before beginning his shift. He denied having any sexual contact or intercourse with W.Z. before going to work that day.

{¶ 30} Ortiz-Vega testified that when he arrived home from work on October 20, 2017, the house was empty and W.Z.’s clothes were missing from drawers. He phoned friends, looking for W.Z., to no avail. The next day, he went to church, also looking for W.Z., but he was not able to find her or to find anyone who knew her whereabouts or “about what’s going on.” On the following Monday, he traveled to Pennsylvania to stay with his daughter for the week. Ortiz-Vega testified that although he never misses work, he phoned the agency that employs him to request

the week off because he needed time off to think. He did not continue to attempt to contact W.Z. during the week.

{¶ 31} Ortiz-Vega also testified concerning W.Z.'s immigration status. He stated that while they were planning the wedding, they began the process of changing W.Z.'s immigration status, with Leny's assistance. Ortiz-Vega stated that he was doing his best to help W.Z. become a United States resident. According to Ortiz-Vega, Leny did most of the paperwork for W.Z.'s immigration status and she is the one who advised Ortiz-Vega about the immigration interview in November. He believed that W.Z. cancelled the November appointment because he never received information regarding the interview.

{¶ 32} Finally, Ortiz-Vega testified that he learned about W.Z.'s accusations on December 15, 2017, when W.Z. arrived at the house with the police to retrieve her belongings.

Manifest Weight of the Evidence

{¶ 33} In his first assignment of error, Ortiz-Vega contends that his convictions are against the manifest weight of the evidence. In support, he essentially argues that the victim had a motive to lie on the stand and her testimony was not credible.

{¶ 34} A manifest weight challenge questions whether the state has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. This challenge also raises a factual issue:

“The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.”

Id. at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 35} “[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Although the reviewing court considers the credibility of witnesses in a challenge to the manifest weight of the evidence, it does so “with the caveat that the trier of fact is in the best position to determine a witness’ credibility through its observation of his or her demeanor, gestures, and voice inflections.” *State v. Campbell*, 8th Dist. Cuyahoga Nos. 100246 and 100247, 2014-Ohio-2181, ¶ 39.

“Because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility.”

State v. Robinson, 8th Dist. Cuyahoga No. 99290, 2013-Ohio-4375, ¶ 56, quoting *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 Ohio App. LEXIS 3709 (Aug. 22, 1997). And a factfinder is free to believe all, some, or none of the testimony of each witness appearing before it. *State v. Ellis*, 8th Dist. Cuyahoga No. 98538, 2013-Ohio-1184, ¶ 18.

{¶ 36} Moreover, “a conviction is not against the manifest weight of the evidence simply because the [factfinder] rejected the defendant’s version of the facts and believed the testimony presented by the state.” *State v. Jallah*, 8th Dist. Cuyahoga No. 101773, 2015-Ohio-1950, ¶ 71, quoting *State v. Hall*, 4th Dist. Ross No. 13CA3391, 2014-Ohio-2959, ¶ 28.

{¶ 37} Ortiz-Vega was convicted of rape in violation of R.C. 2907.02(A)(2), which provides that “[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.” “Sexual conduct” includes both oral and vaginal sex. R.C. 2907.01(A). The statute further defines “sexual conduct” as “the insertion, however slight, of any part of the body * * * into the vaginal or anal opening of another.” *Id.* Under R.C. 2901.01(A)(1), “force” is “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.”

{¶ 38} Ortiz-Vega was also convicted of kidnapping in violation of R.C. 2905.01(A)(4). This statute provides that “[n]o person, by force, threat, or deception * * * shall remove another from the place where the other person is found or restrain the liberty of the other person * * * [t]o engage in sexual activity * * * with the victim against the victim’s will.” R.C. 2905.01(A)(4). “Sexual activity” is sexual conduct or sexual contact, or both. R.C. 2907.01(C). And “sexual contact” means “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.” R.C. 2907.01(B).

{¶ 39} Here, W.Z. testified that Ortiz-Vega repeatedly forced her to have oral, digital, and vaginal sex throughout the month of October during their marriage and the assaults became longer in duration, with rough oral sex continuing for 30 minutes to one hour. She stated that at one point while forcing vaginal sex, he pushed all of his weight on top of her to the extent he was suffocating her.

{¶ 40} Specifically, she testified that when they returned from Tampa, Ortiz-Vega ignored her protestations that she was not feeling well and did not wish to have sex, and he proceeded to perform oral sex on her and force her to have vaginal sex. She stated that each morning before leaving for work, Ortiz-Vega would force her to have sex, and after she began using medicinal cream to treat her swollen and peeling clitoris, he engaged in “prolonged, long oral sex” and digitally penetrated her, “using his fingers.” W.Z. testified that these actions were all performed against her will.

{¶ 41} W.Z. also testified concerning incidents that occurred after she visited her gynecologist for the pain in her breasts and clitoris. She received a letter from her doctor advising her not to engage in any sexual activity for two weeks. She explained the letter and her pain to Ortiz-Vega, yet two days later he began to “touch [her] vagina strongly, * * * touch [her] vagina and clitoris again very strongly [and] he started to lift up my blouse and suck strongly on my breasts and [then] on my vagina.” Describing an incident that occurred the next morning, W.Z. testified that Ortiz-Vega roughly touched her clitoris, and when she attempted to remove his hand, he grabbed her hand and held it down, and she felt Ortiz-Vega “wanted to

stick his fist, his whole fist into my vagina.” She stated that at this point, Ortiz-Vega had “immobilized” her and she had no strength to fight back.

{¶ 42} In his defense, Ortiz-Vega denied that any of the acts occurred. Rather, he testified that he only engaged in sexual activity with W.Z. on two occasions — the night of their engagement and two days after their wedding — and these acts were consensual. He further testified that he never engages in oral or digital sex. On appeal, he claims that W.Z. married him in order to secure her immigration status. He further claims that W.Z. lied about the incidents in order to receive immigration protections offered to victims of violence.

{¶ 43} In this case, where both the defendant and the victim testified, their testimony necessarily invokes a credibility determination. The choice between witnesses and their conflicting testimony, however, rests within the province of the trier of fact “where there is no evidence [that] the [factfinder] lost its way in its assessment and resolving conflicts in evidence.” *Campbell*, 8th Dist. Cuyahoga Nos. 100246 and 100247, 2014-Ohio-2181, ¶ 49, quoting *State v. Ortiz*, 8th Dist. Cuyahoga No. 89952, 2008-Ohio-4120, ¶ 25. In choosing between witnesses and the conflicting testimony here, the jury evidently found the victim’s testimony more credible than the defendant’s, which it was free to do. Indeed, it is well settled that a rape conviction may rest solely on the victim’s testimony, if believed. *State v. Castellon*, 8th Dist. Cuyahoga No. 106813, 2019-Ohio-628, ¶ 41; *State v. Magwood*, 8th Dist. Cuyahoga No. 105885, 2018-Ohio-1634, ¶ 32; *State v. Patterson*, 8th Dist. Cuyahoga No. 100086, 2014-Ohio-1621, ¶ 40.

{¶ 44} W.Z.'s testimony, however, was also supported by the testimony of other witnesses. The SANE nurse testified that W.Z. was anxious, tearful, and appeared to be in pain, when she presented for her examination. The nurse also reported that an internal examination of W.Z. revealed "redness and irritation" unlike any other examination she had conducted.

{¶ 45} Additionally, Leny, W.Z.'s friend, testified that approximately two weeks after W.Z. married Ortiz-Vega, W.Z. seemed sad and more withdrawn. Leny testified that she accompanied W.Z. to multiple medical appointments in one month, and when she learned of the reason for W.Z.'s medical treatment, she broke down and cried.

{¶ 46} Finally, Dr. Escobedo testified that W.Z. presented with complaints of bilateral breast pain and vaginal pain, she reported that she was being sexually abused by her husband, and she appeared to be in a "significant amount of distress." He diagnosed her with bacterial vaginosis, vaginal cuff cellulitis, clitoral irritation, and bilateral breast pain. Dr. Escobedo testified that W.Z.'s "significant clitoral and vulva irritation" was likely due to prolonged, frequent, and rough oral stimulation, and that the vagina appeared to be "traumatized by frequent rough sexual intercourse."

{¶ 47} In light of the record above, and deferring to the trier of fact's credibility assessment, we are unable to conclude that the trier of fact lost its way and created such a manifest miscarriage of justice that a new trial is warranted.

{¶ 48} Ortiz-Vega's first assignment of error is overruled.

Admission of Evidence

{¶ 49} In his second assignment of error, Ortiz-Vega contends that the trial court erred when it permitted evidence at trial of his prior marriages and of his sexual activity with the victim while married. Ortiz-Vega claims this evidence is irrelevant and highly prejudicial.

{¶ 50} Under Evid.R. 402, only relevant evidence is admissible. Evid.R. 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Although relevant, evidence is not admissible “if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.” Evid.R. 403.

{¶ 51} Generally, all evidence a prosecutor presents is prejudicial, yet “not all evidence unfairly prejudices a defendant.” *State v. Robinson*, 8th Dist. Cuyahoga No. 99917, 2014-Ohio-2973, ¶ 22, quoting *State v. Skatzes*, 104 Ohio St.3d 195, 2004-Ohio-6391, 819 N.E.2d 215, ¶ 107. Unfair prejudice is “that quality of evidence which might result in an improper basis for a jury decision.” *State v. Crotts*, 104 Ohio St.3d 432, 2004-Ohio-6550, 820 N.E.2d 302, ¶ 24.

{¶ 52} A trial court has broad discretion in admitting or excluding evidence, and a trial court’s ruling on the admissibility of evidence will be upheld absent an abuse of that discretion and a showing of material prejudice. *State v. Hart*, 2018-Ohio-3272, 118 N.E.3d 454, ¶ 28 (8th Dist.), citing *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 43.

{¶ 53} Here, Ortiz-Vega argues that the trial court abused its discretion in permitting the state to (1) question him regarding the number of marriages he has had, and (2) ask him whether he had sex with the victim while he was married to a previous wife. Ortiz-Vega claims that this evidence was used to degrade him, to comment unfairly on his character or morality, and to prejudice the jury. In response, the state asserts that its questions were designed to properly impeach the defendant, as Ortiz-Vega’s testimony directly contradicted the testimony of other witnesses, namely the victim.

{¶ 54} We note initially that “the right to cross-examine an adverse witness, which includes the right to impeach, is essential to a fair trial and due process.” *State v. Heineman*, 2016-Ohio-3058, 65 N.E.3d 287, ¶ 58 (8th Dist.), quoting *State v. Wynn*, 2d Dist. Montgomery No. 25097, 2014-Ohio-420, ¶ 30.

{¶ 55} Under Evid.R. 607(A), a party is permitted to attack the credibility of a witness for impeachment purposes. The questioner, must have a “reasonable basis for asking any question pertaining to impeachment that implies the existence of an impeaching fact.” Evid.R. 607(B). Moreover, cross-examination is “permitted on all relevant matters and matters affecting credibility.” Evid.R. 611(B). And on cross-examination, a prosecutor is permitted to question a defendant regarding how his testimony significantly contradicts the testimony of others. *State v. Sayre*, 3d Dist. Marion No. 9-12-25, 2013-Ohio-4108, ¶ 63; see *Heineman* at ¶ 59 (finding the witness’s character for truthfulness in question, because the witness’s testimony

“contradicted the testimony of everyone else in her family,” and therefore finding no error in allowing the state to impeach the witness).

{¶ 56} Here, on cross-examination, the prosecutor inquired of Ortiz-Vega’s prior marriages, including his marriage that ended while he was engaged to W.Z. According to Ortiz-Vega, the prosecutor elicited this testimony in an effort to degrade him and unfairly place his character in question. Upon review of the record, however, we find that the state elicited this testimony to (1) challenge Ortiz-Vega’s truthfulness in an effort to properly impeach his testimony, and (2) demonstrate how his testimony significantly contradicted W.Z.’s testimony.

{¶ 57} W.Z. testified that she was devout in her faith, her church prohibited premarital sex, and she and Ortiz-Vega did not engage in sexual relations until their wedding day. She also testified that once they were married: they engaged in oral, vaginal, and digital sex; Ortiz-Vega became verbally abusive and began to fight with her; and beginning on the day they returned from Tampa around October 6, 2017, Ortiz-Vega began to digitally, orally, and vaginally rape her on numerous occasions. Ortiz-Vega, on the other hand, testified that despite the church’s prohibition on premarital sex, he and W.Z. had sex the night they became engaged. He also testified that he does not fight, nor does he ever engage in oral or digital sex.

{¶ 58} On cross-examination, the prosecutor inquired of Ortiz-Vega’s prior marriages in an effort to address the truthfulness of his testimony that he has never, in all of his previous marriages that spanned approximately 24 years, engaged in oral or digital sex or fought with his spouse:

State: It's your testimony there was no fight?

Ortiz-Vega: I don't fight. I just talk.

State: So you never fought with say the four other ex-wives?

Ortiz-Vega: No, I don't fight. I just like to talk and put the things out, say this is how I feel, this is what I feel and we deal with. We talk about it and we get a conclusion about it.

State: Arnaldo, you seem to me to be a man of absolutes. And what I mean by that is you just said you never fight, correct?

Ortiz-Vega: I never have to fight.

State: You never engage in oral sex, correct?

Ortiz-Vega: No, I don't like that.

State: You never engage in digital penetration, do you know what I mean by that, Arnaldo?

Ortiz-Vega: Yes, I do.

State: So those three things that you would agree with me are crucial to this case —

Ortiz-Vega: Yes, they are.

State: — you are absolutely never, ever, right?

Ortiz-Vega: I don't like oral sex. I never practice, I never will, because not doing it for me.

State: So instead of going into detail in each one of these marriages, is it your testimony that all four failed marriages, I don't mean offense by classi[fying] it that way, Arnaldo, but in all four of these prior marriages, there was no oral sex?

Ortiz-Vega: No.

State: There was no digital sex?

Ortiz-Vega: Uh-uh.

State: And you never started a single fight?

Ortiz-Vega: I don't have to fight. I say I have to talk.

State: So like I said, you never started a single fight?

Ortiz-Vega: No.

{¶ 59} We find the above exchange a proper challenge to Ortiz-Vega's credibility and the trial court did not abuse its discretion in permitting this line of questioning concerning Ortiz-Vega's prior marriages on cross-examination.

{¶ 60} The prosecution also questioned Ortiz-Vega regarding his testimony that he and W.Z. had sex on the night of their engagement. This testimony directly contradicts W.Z.'s testimony and calls into question the truthfulness of Ortiz-Vega's testimony. First, we note that the defense opened the door to this testimony regarding sex with W.Z. while still legally married to another woman. On direct examination, defense counsel asked Ortiz-Vega when he "became single again," and Ortiz-Vega responded, "July 21, 2017." And his testimony was that he had sex with W.Z. the night they became engaged, which was in February 2017. So upon cross-examination, the prosecutor inquired:

State: You were separated [from your current wife]?

Ortiz-Vega: Yes, we were separated.

State: But you were dating [W.Z.], is your testimony you had sex with [W.Z.] while you were still married, right?

Ortiz-Vega: Uh-huh.

Court: Is that a yes?

Ortiz-Vega: Well, I have sex, yes.

State: Yes, I believe that you said February?

Ortiz-Vega: Uh-huh.

State: And you didn't get divorced until July?

Ortiz-Vega: July 31st.

State: 2017, correct?

Ortiz-Vega: Yes.

State: So that's the same year?

Ortiz-Vega: Uh-huh.

{¶ 61} At this point, the prosecutor asked Ortiz-Vega if the Seventh-day Adventists Church would “frown upon” a sexual relationship with W.Z. while still married to another woman. Ortiz-Vega responded, “Yes. It’s against the Christian basics.”

{¶ 62} This testimony directly contradicts W.Z.’s testimony that she was a devout Seventh-day Adventist who, abiding by the principles of the church, did not engage in premarital sex with Ortiz-Vega, and it calls into question Ortiz-Vega’s character for truthfulness. The trial court’s decision to permit the cross-examination was therefore not an abuse of discretion.

{¶ 63} Regardless of the admission of the testimony on cross-examination, in light of the overwhelming evidence in the record from which the jury could have

found Ortiz-Vega committed the kidnapping and rapes, we can discern no material prejudice to Ortiz-Vega from the above testimony.

{¶ 64} Ortiz-Vega's second assignment of error is overruled.

Consecutive Sentences

{¶ 65} In his final assignment of error, Ortiz-Vega contests the imposition of consecutive sentences. He contends that the trial court failed to make the statutorily mandated consecutive-sentence findings and the sentence is not supported by the record. He argues, therefore, that his sentence is contrary to law.

{¶ 66} In reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G)(2). *State v. Wright*, 8th Dist. Cuyahoga No. 106175, 2018-Ohio-965, ¶ 9; *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 9. Under R.C. 2953.08(G)(2), an appellate court may increase, reduce, or otherwise modify a sentence, or vacate a sentence and remand for resentencing, if it “clearly and convincingly finds” that the record does not support the sentencing court’s findings under R.C. 2929.14(C)(4) or the sentence is contrary to law. A consecutive sentence is “contrary to law” if the trial court fails to make the statutorily mandated findings. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 37. *See State v. Johnson*, 8th Dist. Cuyahoga No. 102449, 2016-Ohio-1536, ¶ 7 (noting that two ways to challenge consecutive sentences include the trial court’s failure to make consecutive-sentence findings and the findings are not supported by the record).

{¶ 67} R.C. 2929.14(C)(4) provides that the trial court must find that consecutive sentences are necessary to protect the public from future crime or to punish the offender, that such sentences would not be disproportionate to the seriousness of the conduct and to the danger the offender poses to the public, and that one of the following applies:

- (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under postrelease control for a prior offense.
- (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
- (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 68} In making these consecutive-sentence findings in compliance with R.C. 2929.14(C)(4), “the [trial] court must note that it engaged in the analysis’ and that it ‘has considered the statutory criteria and specifie[d] which of the given bases warrants its decision.” *Bonnell* at ¶ 26, quoting *State v. Edmonson*, 86 Ohio St.3d 324, 326, 715 N.E.2d 131 (1999). Thus, a trial court is not required to give a verbatim recitation of the language of R.C. 2929.14(C), provided that “the reviewing court can discern that the trial court engaged in the correct analysis and can determine that

the record contains evidence to support the findings.” *Bonnell* at ¶ 29; *State v. Wilson*, 8th Dist. Cuyahoga No. 107313, 2019-Ohio-1245, ¶ 17.

{¶ 69} Here, the evidence shows that W.Z. was subjected to repeated acts of unwanted oral, digital, and vaginal sex at the hands of Ortiz-Vega. The evidence also shows that these repeated assaults were incessant and extremely rough, and they caused W.Z. extreme discomfort and pain, including a swollen, irritated, and peeling clitoris, a vaginal infection, near suffocation, and difficulty in walking. Further, W.Z. testified that no matter what she did to prevent Ortiz-Vega from assaulting her, including repeated protests, physically attempting to remove him, applying medicinal cream to her vagina, and securing a doctor’s note advising she abstain from any sexual activity for a period of time necessary to heal, Ortiz-Vega continued his nearly daily assaults for an entire month. Finally, the evidence shows that W.Z. did not initially report Ortiz-Vega’s actions to the police because she was afraid and she felt “trapped,” because Ortiz-Vega threatened to report her immigration status to USCIS.

{¶ 70} At the onset of the thorough sentencing hearing, the trial court noted, with thoughtful consideration, that it reviewed the detailed sentencing memorandum; it observed the trial and all the testimony and evidence presented, including the testimony of the medical professionals and the victim; and it considered the principles and purposes of felony sentencing and all of the sentencing factors. The court noted, in particular, the “compelling” and “impactful” victim testimony and the victim’s serious and substantial injuries from which she suffered.

The court noted that those injuries included: deep and internal vaginal injuries, a deep internal vaginal infection, difficulty walking “by the conclusion of the three weeks that this series of events occurred,” bleeding and cracked nipples with infection in the duct of her milk gland, and a peeling and bleeding clitoris as a result of the injuries sustained.

{¶ 71} The court stated that the victim suffered serious physical pain from three weeks of offenses during the course of conduct perpetrated by Ortiz-Vega. The court also noted that the victim suffered psychological trauma due to the offenses being committed “by a person who[m] she loved who she felt swept off her feet by and [with] whom she was in a first marriage” and she will continue to suffer. In recounting the victim’s testimony, the court noted that the victim “broke down” and could not look at the defendant when asked to identify him.

{¶ 72} In imposing Ortiz-Vega’s consecutive sentence, the court made the following findings:

[A] consecutive term[] is necessary to protect the public from future crime and to punish this defendant * * * Consecutive sentences are not disproportionate to the seriousness of this defendant’s conduct and to the danger this defendant poses to the public and * * * at least two of the multiple offenses were committed in this case as part of one or more course of conduct.

{¶ 73} The court additionally found that the victim’s “significant” psychological and physical harm caused by the multiple offenses “was so great or unusual that no single prison term for any of the offenses committed as any part of

any of the courses of conduct adequately reflects the seriousness of this defendant's conduct."

{¶ 74} In light of the foregoing, we find the trial court made all of the consecutive-sentence findings and the record supports those findings.

{¶ 75} Ortiz-Vega's final assignment of error is overruled.

{¶ 76} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHELLE J. SHEEHAN, JUDGE

MARY J. BOYLE, P.J., and
SEAN C. GALLAGHER, J., CONCUR