UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0824

September Term, 2015

FRANCISCO DePAZ LOPEZ

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles, E., Jr.
(Retired, Specially Assigned),

JJ.

PER CURIAM

Filed: June 21, 2016

Convicted of second-degree sex offense, third-degree sex offense, fourth-degree sex offense, and second-degree assault in the Circuit Court for Worcester County, Francisco Lopez, appellant, challenges the sufficiency of the evidence supporting his conviction for second-degree sex offense. Specifically, he claims that the State failed to prove he penetrated the genital opening of the minor victim. *See* Md. Code Ann., Crim. Law § 3-301 (e)(1)(v) (2012 Repl. Vol.) (stating that a "sexual act" for the purposes of proving a second-degree sex offense includes any act "in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus").

Viewing "the evidence in the light most favorable to the prosecution and giving deference to all reasonable inferences drawn by the jury," *Hall v. State*, 224 Md. App. 72, 80-81 (2015), as we are required to do, we conclude the State presented sufficient evidence to support appellant's conviction. The jury could have reasonably inferred that appellant penetrated the victim's labia majora with his finger based on (1) the victim's testimony that appellant put his finger on the "inside" of the body part that she identified as her vaginal area; (2) the forensic nurse examiner's testimony that the victim specifically pointed to her labia majora when asked where appellant touched her; (3) the victim's statement to the officer that appellant licked his finger and put it "into" her "narcas" which the victim identified as her vaginal area; (4) the victim's statement to the social worker that appellant wet his finger and "poked" her "peepee" three times; (5) the fact that appellant's DNA was found in the crotch of appellant's underwear; and (6) the fact that a Y-STR DNA profile from a male contributor was obtained from swabs of the victim's labia majora, labia minora and hymen and appellant could not be excluded as the source of that DNA. *See Lane v.*

State, 348 Md. 272, 287 (1997) ("First and second degree sexual offenses are essentially parallels to first and second degree rape."); *Kackley v. State*, 63 Md. App. 532, 536–37 (1985) ("[P]enetration into the labia minora or the vagina is not required [for second degree rape]; invasion of the labia majora, however slight, is sufficient to establish penetration.").

Moreover, this Court has held that a victim's description of the incident is enough to establish penetration when, as in this case, a jury could have reasonably inferred that penetration occurred "in light of all the surrounding facts[.]" *Simms v. State*, 52 Md. App. 448, 453 (1982) (noting further that a "victim need not go into sordid detail to effectively establish that penetration occurred"); *cf. Craig v. State*, 214 Md. 546, 549 (1957) (noting that an eight-year old child witness's testimony that the defendant "stuck his hand up in me" and "put his private in my legs" was, without more, subject to too much conjecture and speculation to establish the element of penetration in a rape case).

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.