

Circuit Court for Frederick County
Case No. C-10-CR-20-000553

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 928

September Term, 2022

VIDAL CORADO-QUINTANILLA

v.

STATE OF MARYLAND

Nazarian,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 27, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Frederick County, Vidal Corado-Quintanilla, appellant, was convicted of one count of third-degree sexual offense. He raises two issues on appeal: (1) whether the trial court abused its discretion in allowing the State to amend the indictment to change the date of the offense without his consent, and (2) whether there was sufficient evidence to sustain his conviction. For the reasons that follow, we shall affirm.

The victim, who was nine years old at the time of trial, testified that appellant had touched her breast and “butt” underneath her clothes. This occurred in appellant’s room, which was located in the home of the victim’s grandmother. The victim’s cousin also testified that she had been at that house, opened the door to appellant’s room, and had seen him touching the victim’s bottom.

The indictment alleged that the offense occurred on or about December 16, 2019. However, just prior to the start of trial, the State requested to amend the indictment to change the date of the offense to a range between August 1 through December 16, 2019, because the victim “was 7 at the time of the disclosure” and “it’s very hard for children of a young age to determine the exact date of an offense, especially given the length of time that has passed in this case.” The court permitted the amendment over appellant’s objection. Appellant did not request a continuance.

Appellant first contends that the court abused its discretion in allowing the State to amend the indictment. We disagree. “On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the

parties is required.” Md. Rule 4-204. And our courts “have repeatedly held that the date that an indictment alleges that the criminal conduct occurred ‘may be amended in the court's discretion without changing the character of the offense.’” *Thompson v. State*, 412 Md. 497, 516 (2010) (citation omitted); *see, e.g., State v. Mulkey*, 316 Md. 475, 482 (1989) (“[T]he State is not confined to the specific date or dates stated in the charging document.”); *Tucker v. State*, 5 Md. App. 32, 34-35 (1968) (concluding that the date of the alleged offense was a matter of “form,” not “substance,” and could be amended without changing the character of the offense charged).

Although appellant contends that he was “blindsided” by the amendment, he did not request a continuance, as would have been allowed pursuant to Rule 4-204. Nor does he identify any specific aspect of his defense that relied on the timeframe initially set forth in the indictment. In fact, appellant contended at trial that the incident did not occur at all. Therefore, the court did not abuse its discretion in allowing the amendment to the indictment.

Appellant next asserts that there was insufficient evidence to sustain his conviction because the State failed to prove the date that the offense occurred. Again, we disagree. As the State correctly notes, “because the date of an offense generally is not an element of the offense, a variance between the time period alleged in the indictment and the proof at trial is not fatal to a conviction.” *Reece v. State*, 220 Md. App. 309, 333 (2014). In other words, “the time period proven need not coincide with the dates alleged in the charging document, so long as the evidence demonstrates that the offense was committed

prior to the return of the indictment and within the period of limitations.”
Id. (quoting *Crispino v. State*, 417 Md. 31, 51-52 (2010)). In fact, with respect to sexual abuse cases involving young victims, requiring specificity in dates would be unreasonable because “[t]he ability of a child to definitely state the date or dates of the offenses or to narrow the time frame of such occurrences may be seriously hampered by a lack of memory.” *Crispino*, 417 Md. at 53 (quotation marks and citation omitted). Thus, the State did not need to prove that the offense occurred within the range of dates set forth in the amended indictment. Rather, the State only needed to show that it occurred before the return of the indictment, within the period of limitations, and at a time when the victim was under 14 years of age and appellant was at least four years older.

When viewed in a light most favorable to the State, the evidence demonstrated that the offense occurred prior to January 2020, which was also prior to the return of the indictment, as the incident was reported to Child Protective Services that month, and the victim’s mother testified that the last time she took the victim to appellant’s house was in December 2019. Moreover, there is no statute of limitations for the offense of third-degree sexual offense. Finally, there was evidence that the victim was 9 years old, and appellant was 40 years old, at the time of trial. Thus, the jury could reasonably infer that the victim was under the age of 14, and that appellant was at least four years older than her, when the offense occurred. Consequently, there was sufficient evidence to sustain appellant’s conviction.

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