Circuit Court for St. Mary's County
Case No: C-18-CR-21-000002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1877

September Term, 2022

CLAYTON WILLIAMS

v.

STATE OF MARYLAND

Wells, C.J.,
Graeff,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: May 7, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After a jury trial in the Circuit Court for St. Mary's County, Clayton Williams, appellant, was found guilty of sexual abuse of a minor and third-degree sexual offense and acquitted of second-degree rape.[1] He was sentenced to concurrent terms of twenty-five years, with all but ten years suspended, for sexual abuse of a minor and four years for third-degree sexual offense. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

> I. Is the evidence insufficient to sustain the convictions for sexual abuse of a minor and third-degree sexual offense?
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> II. Did the trial court err in finding [a]ppellant made a knowing waiver of counsel for sentencing, where the court incorrectly advised [him] of the maximum penalty he faced?

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and C.W. were married in 2009. At that time, each had a daughter from a prior relationship. C.W.'s daughter, L.H., was born on May 19, 2005. At some time prior to the events that gave rise to this case, L.H. was diagnosed with type one diabetes, for which she took insulin, and depression, for which she was prescribed medication. She also had a history of seizures. L.H. Sometimes referred to appellant as "Tommy." Appellant's daughter, T.W., was about the same age as L.H. After their marriage, appellant

[1] The charge of sexual abuse of a minor was based on either anal penetration or placing his penis between the buttocks of the victim. The third-degree sexual offense was based on placing his penis between the buttocks of the victim. The second-degree rape charge was based on anal penetration of the victim.

and C.W. had two children together, a daughter, who was born in November 2010, and a son, who was born in February 2015. At all times pertinent to this case, appellant, C.W., L.H., and the two youngest children lived together in a home in Lexington Park.

On December 3, 2020, fifteen-year-old L.H. and her five-year-old brother got into an argument because the boy had flushed newspaper down a toilet and made a mess in a bathroom. L.H. thought that her brother was not receiving the type of consequence she thought he should receive. L.H.'s mother, C.W., commented that L.H. was being cold to her brother. At that point, appellant said that L.H. was acting that way "because of him" and that "there was some inappropriate things that had happened." C.W. told appellant to leave the home. She attempted to ask L.H. about what had happened and L.H. "shared that there was some inappropriate things that had happened and that he would – that he had touched her inappropriately." C.W. was "extremely distraught" and she "scared" L.H, who left the house with a friend who had come by in a car to pick her up. C.W. called 911 and reported that her husband told her that he had been inappropriate with her daughter when she was in middle school and that she was currently a sophomore in high school. Police were dispatched to the house and officers spoke with C.W. and L.H., who had returned home.

An audio and video recording from a police body-worn camera was played at trial. L.H. told officers that when appellant was in her room he would lay behind her, pull down her clothes, and have skin contact with his penis "between my butt." L.H. said appellant never made her touch him but that he would slap her.

The following morning, C.W. took L.H. to the Child Advocacy Center. A CPS investigator conducted a forensic interview with L.H. C.W. was not present in the room during the forensic interview. That interview was audio and video recorded and, at trial, was played for the jury.

During the interview, L.H. stated the following. On December 3, 2020, after her mother asked why she was being so cold, appellant said that he knew why she was acting that way. Appellant told C.W. that the night before, he woke up and found L.H. giving him oral sex. Appellant also admitted to putting his penis between L.H.'s thighs when she was asleep. L.H. did not remember ever initiating contact with appellant, but there were things she remembered that started, she thought, when she was thirteen years old, but definitely after she was ten years old. Multiple times all through middle school, appellant would come into L.H.'s room in the early morning hours, before her bus arrived at 6:45 a.m. He would get behind her, pull her clothing down, and put his penis between her buttocks, not inside her, but between the back of her thighs, and start "humping" her until he ejaculated. L.H. stated that when he finished, "it would be in the underwear that I have and on the back of my thighs" and she would "have to go wipe [her]self off before school."

L.H. said that she would lay on her right side and be silent because she did not know what to do. When it was over, she would wait about thirty minutes, so that appellant thought she was asleep, and then she would get up and go to school. This happened on an inconsistent basis, but sometimes several times per week. There were times when L.H. did not get her monthly period and she was afraid she might become pregnant from what was happening. She explained, "[b]ut I was able to draw that conclusion that this wasn't this.

So, I was always scared." L.H. said that she "vividly" remembered "everything in middle school because middle school was horrible" because of what happened to her.

L.H. explained that "[i]t wasn't just laying behind me. One time it really hurt, and, like, I was bleeding, but it wasn't – it wasn't my vagina or anything, it was in my butt." She said that it hurt for "a really long time[.]" Appellant "would finish and he would shake[,]" and then L.H. "would have to go clean [her]self off and get ready for school because, like, [she]'d still be scared." After wiping herself, L.H. could see blood on the toilet paper. L.H. "knew [appellant] was awake" and realized what he was doing to her because, on one occasion, he "got up off of" her, "kissed [her] hips[,]" and "threw the blanket back on" her.

L.H. said these incidents happened on multiple occasions from 2017 through 2019 and that she started self-harming while the incidents were occurring. The last time an incident occurred was about the time she finished middle school. She recalled that the incidents ended at a time in middle school when her hair was blue, at about the time she had a seizure, and before her 8th grade formal. She believed that the incidents stopped because her mental health "had gotten really bad and I think [appellant] had seen it."

L.H. stated that a couple of months prior to the incident on December 3, 2020, she told appellant that she knew what "he did to" her. He responded that he was really sorry and that if he could take everything back he would. L.H. told appellant that he "just put [her] through a lot." L.H. stated that these experiences damaged her and that she was "crazy to everyone" and "show[ed] it through [her] behaviors of how [she was] feeling." L.H. wanted to wait until her mental health was more stable before disclosing what had

happened to her, but appellant wanted to tell her mother. L.H. said that after appellant left the house on December 3, 2020, she sent him a text message saying that she loved him. He responded that he loved her, too, and that he was sorry. L.H. responded that she wanted the disclosure to be on her terms. In response, appellant wrote, "I couldn't hold it in any longer my conscience was burning me[.] I[']m just asking God to heal you of Diabetes since He wanted me to confess this[.]"

On December 7, 2020, C.W. filed for a protective order for herself and on behalf of L.H. and the two younger children. Appellant was arrested on December 10, 2020. On or about January 7, 2021, appellant was released and placed on electronic monitoring pending trial. The following month, C.W. retained the services of an attorney to represent L.H. On March 9, 2021, C.W. asked the court to rescind the protective order because she "didn't feel like [appellant] was a threat and he really wanted to see his children." Shortly thereafter, C.W. caused L.H.'s attorney to withdraw her appearance from the case and that was done on March 30, 2021. C.W. and appellant were divorced in April 2021.[2] C.W. took the two youngest children to visit appellant "pretty regularly." She typically met appellant at his parents' house while L.H. stayed at the family home or with a friend.

In July 2021, when the scheduled trial date was approaching, C.W. contacted the prosecutor and defense counsel and told them that L.H. told her that her "statements, or the situation, wasn't true." On August 3, 2021, L.H. was interviewed again by the CPS

[2] C.W. testified that she and appellant were having difficulties separate and apart from the issue of sexual assault or abuse, and had been "in therapy for quite some time trying to work through some of the difficulties" in their marriage.

investigator at the Child Advocacy Center. At that time, L.H. had not seen appellant since December 3, 2020, when he left the family home. L.H. said that was "[b]y choice" and because she "thought that we still had the Protective Order[,]" although at the time of the interview she was aware that the protective order was no longer in place.

L.H. told the CPS investigator that she remembered the events happening, but she did not know who did them because she did not turn around but stayed facing the window in her bedroom. She recalled that there were other people living in her house, including an uncle and one of appellant's close friends. When asked if it shocked her when appellant said he was the one who did this, L.H. responded, "Well, I don't know when he said that. If he said that, my mom would know because I remember not enough [of] that night." She said that "right after that," she went out with her friend and "took a shot." When she was told that the police were at her house, she "took two shots and came back home."

During the course of the interview, the CPS investigator expressed concern that, in the first interview, L.H. was "certain that it was" appellant who "touch[ed her] inappropriately and such[,]" but now "it sounds like you're not sure if it was him." L.H. responded:

> Well, I never turned around. Like, when it was happening, it was all behind me. And in that room there's a window and I just stared out the window. Kind of, like, to get away from it as possible. So –
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> * * *
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> When it did happen, there were three other people in that house that I don't know, like I don't know to the point where, like, I feel, like, super safe from them. So, like, I don't know – like, if I turned around, yeah, it could be whoever it was, but I can't say for sure, yeah, I saw him with my own eyes

> doing this, because I didn't turn around. And it was dark and there were no lights on.
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> * * *
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> And I told my mom because we were – this was, like, during these siblings – and I was, like, I feel really bad because even since, like, I was – like, even, like, I wouldn't even – I can't be for certain. I don't want to put somebody (indiscernible at 11:08:54 a.m.) who didn't do something in a place that they shouldn't be because they didn't actually do it. I can't say whether they did it or not.
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> * * *
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> I don't want to be that person.

Later in the interview, L.H. confirmed that in the first interview she said that somebody would come into her room, lay behind her, and touch her in places she did not want to be touched. She could feel things that were happening behind her. However, she was not sure who that person was who was behind her.

L.H. stated that on the night of December 3, 2020, she spoke to her therapist on the phone for the last time. L.H. said her mother told her, "I don't think you should see her anymore, and you can't, like, tell her everything while being treated." Thereafter, C.W., L.H., and the two younger children began family therapy. L.H. described family therapy as being "hard." She spent some time in Texas with a grandmother and mentioned being told to start a "therapy blog in Texas." Thereafter, she "had an order . . . to come back from Texas[,]" and then "it was, basically, like setting boundaries so that [she] could come home. And understanding, like, there were certain rules that needed to be followed before [she] came home. So, there wasn't – it wasn't very much talking about that."

L.H., who had been treated for depression, said that "a couple of months ago" she texted her mother to say that she did not want to be "back on medications[,]" and at the time of the second interview, she was not using any medications. She spoke about things that got distorted, high levels of stress, and window blinds that appeared to be melting "like when candles melt in a room." She also spoke about how, when she was taking medication, she experienced "auditory hallucinations, like the visual ones that I was telling you about. But not in a way that I would, like, see things." L.H. also referenced feeling like the walls were "coming closer and getting bigger." She said that "after those things, I'd have body terrors where it felt like the same thing happened again." C.W. acknowledged that at some time after December 4, 2020, L.H. told her that she had experienced "[h]allucinations. Like, she will feel like she's not fully present. Like, that she's not herself."

The trial date was rescheduled for October 2021. C.W. stated that she encouraged L.H. to participate in pretrial preparation, which she believed was optional. L.H. did not want to participate in pretrial preparation, so C.W. honored her wishes. In the days leading up to the trial, however, an individual from the Child Advocacy Center came to the family home and told C.W. that "there was a warrant out and they were going to go lights on[,]" that she needed to contact the prosecutor, and that L.H. had to participate in pretrial preparation. C.W. told L.H. that "this was not an option and that we had to do" pretrial preparation.

That night, while L.H. was sleeping, C.W. noticed cut marks on one of her arms. C.W. explained that "[s]elf-harm is something that [L.H.] typically participates in when

she's under extreme stress or feels like she is in a situation that she feels trapped." C.W. testified:

> I woke her up and I told her that I had to take her to the hospital to be evaluated. Because of the history, I wanted to be safe. [L.H.] has had suicidal ideations. She suffers from . . . depression. She has a very difficult time coping in stressful situations. And she really internalizes a lot of things. So, I just wanted to make sure that her mental health was intact and that she was mentally safe and sound. And if she needed help with something, that I could get her the help that she needed to get her back on track.

On the day L.H. left the hospital, C.W. spoke with the prosecutor and said that they could meet that day "because I had already taken off because of [L.H.'s] mental health." After meeting with the prosecutor, L.H. wrote a statement. C.W. drove L.H. to a "police building down the street" from the courthouse. According to C.W., L.H. went into the police building unaccompanied by her mother and delivered her statement. The statement, which was signed by L.H. and dated 8:21 p.m. on October 9, 2021, provided:

> I would like to share my side of things <u>without question</u>. That evening, on December 3rd, the house felt very tense like a bottle was going to pop. I knew my dad (Clayton Williams) was angry but I wasn't sure about what or to what extent. My brother made me upset that night. [He] flushed newspaper down the toilet, he knows better. I was upset and yelling at him. When my dad heard me, he yelled at both of us. My mom called me downstairs and my dad came to speak to both of us. He said things I don't remember happening. My mom was very upset and told him to leave and he left. I know my dad has been accused of doing things to me, but I do not remember these things happening and I don't believe Tommy to be one to do them. I went along with what my mom was told to do, because I did not want her or my siblings upset. Being surrounded by multiple officers with weapons after trying understand [sic] the trauma that had just occurred was scary and overbearing.
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> The whole situation has made me feel trapped and pressured. I have been under extreme stress since the start of my investigation. The State using things we said but yet considered me mentally unstable. I made my hospitalization known to the State, specifically Sarah Proctor but she

> continued to press to speak with me despite the condition they claimed I was in. I feel strongly that this investigation is messy and would cause anyone to be mentally unstable. There are people I don't know coming to my door, yet adults teach us not to open the door for strangers. The safety they claim to provide feels like danger.

At trial, C.W. testified that on December 3, 2020, appellant told her that "something inappropriate happened" and that she believed L.H. "in that moment." She stated that she did not hear appellant "give any subject matter specificity" about any sex act, incestuous act, penile penetration of the vagina, or penile penetration of the anus. In addition, there was no medical information she was aware of that placed appellant as a perpetrator of any sex act on L.H. She also claimed that L.H. "will sometimes avoid certain situations and may lie to not get in trouble." According to C.W., when L.H. was younger, about thirteen or fourteen years old, and in middle school, she sent a text to some friends containing a lie that C.W. had hit her in the head with a hammer. C.W. said that "[n]ow, it's more so avoidance of getting in trouble is why [L.H.] will sometimes avoid the truth sometimes."

At trial, L.H. testified that two weeks prior to December 3, 2020, she got "really drunk to the point where [she] had alcohol poisoning" and that she threw up all over herself and her bed. Appellant brought her some Pedialyte and told her if she did not stop, he would tell her mother. At that time, she was also smoking marijuana and appellant discovered that and warned her about it. On December 3, 2020, appellant told C.W. what had happened. In response, L.H. then lied and said that appellant had molested her. L.H. explained that there was "just a whole bunch of pent up emotion[,]" that she was "pretty avoidant[,]" and that she said that "in order to avoid everything. I just wanted him out." She said that appellant "had been molesting me, from what I could remember, middle

school and onward and to like 14." At that time, she did not describe the molestation to her mother. L.H. explained that she lied because she "didn't want to be looked down upon by [her] family for having alcohol poisoning" and did not want her mother to find out about the alcohol or marijuana use because she had already told her mother that she was going to stop.

After the incident, L.H. left the house and "smoked two blunts" with her friend and "drank Ciroc[.]" When she returned home, the police were there. L.H. "went up to [her] little brother's room" and "[t]hey asked [her] if anything had happened." After that, L.H. said, "it gets really hard to remember." She did not recall what she told the police and she recalled hugging her uncle, but could not remember what happened after the police left.

The next day, L.H. was interviewed at the Child Advocacy Center, where she "was still lying and trying to maintain what [she] said." L.H. testified that the statements she made at the interview about being molested were "made up" lies. L.H. remembered that in her second interview at the Child Advocacy Center she told the CPS investigator that she had been talking to her mother and sister and, in talking to them, was concerned about her memory because her face was always in her pillow and she did not know who was behind her. L.H. also acknowledged the truth of certain statements she made during the second interview such as that her mental health "depleted" in middle school, that her mother told her it was always up to her and whatever she wanted to do, that she really did not want "to deal with" any of it, and that her mother took her siblings to see appellant while she stayed behind. L.H. maintained that the letter she delivered to the police station was "the truth[,]" but after reading the second page of the letter, she said, "[a]t this point, I

was still lying." On cross-examination, L.H. acknowledged that medication she took for depression affected her and she explained that in times of high stress "it felt like the blinds of the windows are like folding down and the floor was moving underneath me. So, it was more of just like kind of how I felt." When asked if she was having hallucinations, she responded "[i]t was like cognitive, too." L.H. also testified that when a CPS worker came to the door of her family's home, she was inside with her two siblings and their mother was at the store.

The State introduced at trial certain text messages between appellant and an individual identified as "Kunno." In one of those messages, appellant acknowledged that he touched L.H. inappropriately, writing that he "[d]idn't seduce but touched her inappropriately[,]" but "[n]ot smashing." The State also introduced recordings of certain telephone calls appellant made from the jail when he was incarcerated from December 10, 2020 to January 7, 2021. Those conversations included the following statements made by appellant on December 28, 2020:

> I've worked with her as well, and getting to talk to her (indiscernible at 11:22:30 a.m.) because right now she's angry. We have to approach in love and utter hunger. And they say there can't be any, you know, there can't be any legalese speak, or (indiscernible at 11:22:43 a.m.) can't be any, you know, oppressive type of speak, you know what I mean, or like authoritative speak. Like that has to go completely away and it has to be a humble request, you know, to – a humble request just to speak with her. And, then, a gentle – a very gentle explanation and word, but that has a legal practice now, a legal background.
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> The last couple of days, you know, I'm trying to keep my mind off of them the way, you know, I really can't stop thinking about my wife. And I just keep seeing that the wife, the wife comes to media, would be able to see.

> I can't believe lying to her, you know, to pay. Some of the information that she was under the impression of was false because when I first talked to my wife that night, you know, my mind was solely that I may influence for two or three days. It wasn't tied down. And, really, I'm into jailhouse range, but, really, sit back in peace together with everything I was trying to say. You know.
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> And it wasn't until – it really wasn't until (indiscernible at 11:28:02 a.m.) type of thing about it until that night, she really explains it because she hasn't expressed – she hasn't been expressing a whole lot of her anger.
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> She expressed it that night, you know, and that's what I was trying to explain to [C.W.] from start to finish. Hey, you know, here's some things that happened that [L.H.] did. I had nothing to do with her. Here are some things that, my mindset, with my mindset, well, these things I thought about, you know, as a result of these things and these things. I (indiscernible at 11:28:25 a.m.) my wife, but they weren't actual actions, you know. And please hear me out. Right. That information and that understanding, you know, being communicated would really be able to – that in itself would really be able help [sic] the both of them to be able to pull, or recant, or rethink through, you know, statements that they've made.
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> Because right now, you know, when [C.W.] first talked to [L.H.], would she have listened. My daddy didn't do anything. When the detective first talked to her, I mean, multiple times, no, my daddy didn't do anything. Well, it's what your mom is saying right now. Did these things happen? And then start trying to walk her through based on, you know, the discussion that me and [C.W.] had that was completely – not even close to completely understood first off. So, looking at it from that standpoint, I mean, you know, I don't know how old that she is right now, but I just thought go right in to an intermediary as being able to explain that and talk with her how much (indiscernible at 11:29:25 a.m.) narrative exchange told a certain way.

In another recorded call on December 30, 2020, appellant spoke about having someone "skillful and knowledgeable" explain how to "back down off of things that you made on that were not true, one, and you will not be in trouble." Appellant stated, "this is not something that we try to attack multiple times. I mean, this is a one-time conversation.

. . . You are under false information initially. Now, everyone can back down because no one has to protect anyone else." Appellant continued:

> So, I'm not sure that anyone gave her strategy to show how, and then was willing to walk through and help and make sure that there was no repercussion on her hands. That's the part that is the biggest thing. I doubt seriously that that happened. And now you can quote me the law, but I'm not sure that that happened where, you know, does she kill us by (indiscernible at 11:33:06 a.m.) the first time, like. But that's her biggest concern, you know, being (indiscernible at 11:33:11 a.m.) being taken care of, her safety, you know. And still, in her words, being looked at as a lie.

Appellant went on to say that "[s]he can't back off her statement if, you know, she's whining to the police and anything like that. And the thing is, we need a lawyer who knows how to explain – to explain how to walk her through it." Lastly, appellant was recorded saying "[s]he can be influenced[,]" that "I really think we're very close to the finish line here[,]" and that:

> I'm just letting you know that from where I sit and see, there's no mobility and no activity because there's so much stuff going on. Whereas, there could be some really quick strikes that could correct a lot of this, but like I said, the main key there is, you know, for her to feel safe because it she makes her feel soft. You know, she may feel soft, but –

DISCUSSION

I.

Appellant contends that the evidence was insufficient to sustain his convictions for both sexual abuse of a minor and third-degree sexual offense. We disagree and explain.

A. Standard of Review

"The standard of review for legal sufficiency in a criminal case is whether, on the evidence adduced at trial, viewed in the light most favorable to the State as the prevailing

party, any reasonable juror could find the elements of the crime charged beyond a reasonable doubt." *Sequeira v. State*, 250 Md. App. 161, 203 (2021) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Accordingly, we "will reverse the judgment only if we find that no rational trier of fact could have found the essential elements of the crime." *Winder v. State*, 362 Md. 275, 325 (2001). "When reviewing a sufficiency of the evidence challenge, it is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case." *Id*. Instead, "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998). "We give 'due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Moye v. State*, 369 Md. 2, 12 (2002) (alteration in original) (quoting *McDonald v. State*, 347 Md. 452, 474 (1997)).

This "standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *State v. Smith*, 374 Md. 527, 534 (2003)). Indeed, "'[c]ircumstantial evidence is sufficient to sustain a conviction"' as long as "the inferences made from circumstantial evidence . . . rest upon more than mere speculation or conjecture." *Id.* (quoting *Bible v. State*, 411 Md. 138, 157 (2009)). Here, the evidence was sufficient for a reasonable factfinder to conclude that appellant committed the crimes of which he was convicted.

B. Sexual Abuse of a Minor

We have summarized the elements of the offense of sexual abuse of a minor as follows:

> [T]he three elements that the State must prove are: (1) that the defendant is a parent, family or household member, or had care, custody, or responsibility for the victim's supervision; (2) that the victim was a minor at the time; and (3) that the defendant sexually molested or exploited the victim by means of a specific act.

Schmitt v. State, 210 Md. App. 488, 496, *cert. denied*, 432 Md. 470 (2013). There is no dispute that the first two elements were satisfied here; the only element at issue in this appeal is the third one, the element of sexual molestation or exploitation by means of a specific act.

"Sexual abuse" is "an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not."[3] Md. Code (2002, 2012 Repl. Vol., 2017

[3] At the time of the underlying offenses, § 3-602 of the Criminal Law Article of the Maryland Code provided, in relevant part:

> (a) *Definitions*. — (1) In this section the following words have the meanings indicated.
> (2) "Family member" has the meaning stated in § 3-601 of this subtitle.
> (3) "Household member" has the meaning stated in § 3-601 of this subtitle.
> (4)(i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.
> (ii) "Sexual abuse" includes:
> 1. incest;
> 2. rape;
> 3. sexual offense in any degree;
> 4. sodomy; and
> 5. unnatural or perverted sexual practices.

(continued…)

Supp.), § 3-602(a)(4)(i) of the Criminal Law Article ("CR"). Sexual abuse includes, but is not limited to, incest, rape, sexual offense in any degree; and unnatural or perverted sexual practices.[4] CR § 3-602(a)(4)(ii). The conduct underlying the charge need not be criminal in nature. *See Tribbitt v. State*, 403 Md. 638, 650-52 (2008). "'[S]exual child abuse is broader than, *inter alia*, even a closely related sexual offense and . . . , even granting a substantial overlap in the respective coverages, it may be established even though the related sexual offense has not been completely established.'" *Schmitt*, 210 Md. App. at 497 (quoting *Tate v. State*, 182 Md. App. 114, 124 (2008)). The sexual abuse of a minor "can be committed through a single act or a continuing course of conduct consisting of multiple acts." *Walker v. State*, 206 Md. App. 13, 42 (2012), *aff'd*, 432 Md. 587 (2013).

C. Third-Degree Sexual Offense

The elements of third-degree sexual offense are set forth in CR § 3-307(a)(3), which provided at the time of the underlying offenses as it does now:

> (a) *Prohibited*. — A person may not:
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> * * *
>
> (3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;

> (b) *Prohibited.* — (1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
>
> (2) A household member or family member may not cause sexual abuse to a minor.

[4] Acts 2020, ch. 45, effective October 1, 2020, deleted former CR § 3-602(a)(4)(ii)(4), which included "sodomy" as a form of sexual abuse.

> (4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
> (5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

"Sexual contact" is defined as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." CR § 3-301(e)(1). It does not include "a common expression of familial or friendly affection" or "an act for an accepted medical purpose." CR § 3-301(e)(2)(i), (ii). The phrase "for sexual arousal or gratification, or for the abuse of either party" establishes a specific intent requirement, which may be deduced from the "circumstances surrounding the touching, or from the character of the touching itself." *Bible*, 411 Md. at 158. Circumstances that may demonstrate a specific intent for sexual gratification may include:

> whether the defendant and victim were strangers or knew each other; whether either party was undressed; whether anything was spoken between them; whether the touching occurred in public or in a secluded area; whether the defendant displayed any signs of sexual arousal; or whether the defendant behaved in [a] nervous or guilty manner when another person came upon the scene.

Id. at 158. With regards to the character of the touching, "the force of the touching, the motion (was it a pat, a rub back and forth, a circular motion, a brush), the duration, and the frequency are all important." *Id.*

D. Analysis

In the case at hand, the State alleged that appellant sexually abused L.H. by placing or attempting to place his penis between her buttocks or by engaging in anal intercourse with her at a time when she was a minor. The State also alleged that appellant committed a third-degree sexual offense by placing his penis between L.H.'s buttocks.

Appellant first contends that the evidence was insufficient to establish that he sexually abused L.H. by engaging in anal intercourse with her. Appellant acknowledges that in her first interview with the social worker, L.H. stated that on one occasion, appellant put "it" "in [her] butt" and it "really hurt," and when she went to the bathroom and wiped herself she saw blood on the toilet paper. Nevertheless, he maintains the evidence was insufficient because there was no medical testimony to support a claim of anal intercourse, he was acquitted of second-degree rape based on the same conduct, and L.H. gave conflicting statements.

Appellant also contends that the evidence was insufficient to support the accusation that he placed his penis between L.H.'s buttocks. He argues that because L.H. gave varying accounts of what happened, the jury would have to resort to speculation or conjecture to determine which statement was true. According to appellant, his own admission of "inappropriate touching" was not sufficient to support the allegations and, because neither his text messages nor C.W.'s testimony clarified what was meant by inappropriate touching, the jury was left to speculate as to what occurred. Appellant's arguments are not persuasive.

Appellant has not directed our attention to any authority, and we know of none, requiring the State to produce medical evidence of anal intercourse in order to prove sexual abuse of a minor. The fact that appellant was acquitted of second-degree rape does not have any bearing on whether the evidence was sufficient to establish the other crimes charged. As for L.H.'s conflicting statements, appellant's argument goes to the weight of the evidence, not its sufficiency. L.H.'s statement about one occasion on which appellant

placed his penis in her "butt" was sufficient to support the jury's decision. "The jury was free to believe some, all, or none of the evidence presented in this case." *Sifrit v. State*, 383 Md. 116, 135 (2004). It was "the jury's role to resolve the conflicts in the testimony, to determine the inferences to be drawn from the evidence, and to decide what relative weight to be attributed to the evidence presented[.]" *McClurkin v. State*, 222 Md. App. 461, 488 (2015). Contrary to appellant's assertion, the jury was not forced to engage in speculation or conjecture, but was free to credit the statements L.H. made to the police and in her first interview with the CPS investigator and to discredit her later statements. We will not second-guess the jury's credibility finding. *Fuentes v. State*, 454 Md. 296, 307-08 (2017) (explaining that an appellate court does "not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence" (quotation marks and citation omitted)).

Our review of the record also reveals that there was sufficient evidence presented from which the jury could properly conclude that appellant placed his penis between L.H.'s buttocks. L.H. told police that appellant would lie behind her in her bed, pull down her clothes, and put his penis "between my butt." In her first interview with the CPS investigator, L.H. explained that when she was in middle school, appellant would occasionally enter her bedroom in the early morning hours, lie down on her bed beside her, pull down her clothing, and "hump[]" her. L.H. specifically stated that appellant was "not inside of me, but right in-between, like the back of my thighs, right underneath everything." In addition, she explained that appellant's penis "was like right in-between, like right underneath in the crease. Like, if I stand up, and, so, he was like in the crease right there."

These statements, if believed by the jury, were sufficient to sustain appellant's convictions for both sexual abuse of a minor and third-degree sexual offense.

II.

Appellant contends that the circuit court erred in finding that he made a knowing waiver of counsel prior to his sentencing because the court incorrectly advised him that the maximum sentence he faced was twenty years rather than thirty-five years. We disagree and explain.

A. Waiver of the Right to Counsel

The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . and to have the Assistance of Counsel for his defence." U.S. CONST. amend. VI. Both the Sixth Amendment and Article 21 of the Maryland Declaration of Rights[5] guarantee a criminal defendant the right to counsel in all cases that involve the possibility of incarceration as well as the corresponding right to proceed without the assistance of counsel. *See Lopez v. State*, 420 Md. 18, 33 (2011) (quoting *Parren v. State*, 309 Md. 260, 262-63 (1987)). That includes the right to counsel at sentencing hearings. *Gardner v. Florida*, 430 U.S. 349, 358 (1977); *Smallwood v. State*, 237 Md. App. 389, 403 (2018).

[5] Article 21 of the Maryland Declaration of Rights provides "[t]hat in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; [and] to be allowed counsel[.]" Md. Decl. of Rts. art. 21.

When a request to discharge counsel is made prior to trial, the trial court must follow the procedures set forth in Maryland Rule 4-215. When, as in the instant case, the request is made after meaningful trial proceedings have begun, the strictures of Rule 4-215 do not apply. *State v. Campbell*, 385 Md. 616, 632-33 (2005). *See also State v. Brown*, 342 Md. 404, 412 (1996) (holding that Rule 4-215 "is inapposite once trial is underway"); *Catala v. State*, 168 Md. App. 438, 469 (2006) (A circuit court, during a sentencing hearing, is not required "to comply with the strict requirements of Rule 4-215."). The decision to dismiss counsel once trial has begun is in the discretion of the trial court, although the court "must still adhere to constitutional standards." *Brown*, 342 Md. at 426. *See also Campbell*, 385 Md. at 632 ("[T]he decision to permit discharge of counsel after trial has begun is within the sound discretion of the trial court." (quotation marks and citation omitted)); *Barkley v. State*, 219 Md. App. 137, 165 (2014) ("The ultimate decision [is] discretionary. What is mandatory is the provision of the opportunity to explain."). A court abuses its discretion when it acts "without reference to any guiding rules or principles," and "when the court's act is so untenable as to place it beyond the fringe of what the court deems minimally acceptable[.]" *State v. Hardy*, 415 Md. 612, 621-22 (2010) (quotation marks and citations omitted).

In making its determination, "[t]he court must conduct an inquiry to assess whether the defendant's reason for dismissal of counsel justifies any resulting disruption." *Brown*, 342 Md. at 428. A criminal defendant may waive his right to counsel after trial commences provided that the waiver is knowing, intelligent, and voluntary. *Lopez*, 420 Md. at 30-33; *Fowlkes v. State*, 311 Md. 586, 589 (1988) ("A defendant may exercise his . . . right of self-

representation only if he knowingly, intelligently, and voluntarily waives his right to counsel."). The court is required to ensure that the waiver is knowing, intelligent, and voluntary regardless of whether the litigant raises that issue. *Smallwood,* 237 Md. App. at 397 ("[T]he right to counsel is 'absolute and can only be foregone by the defendant's affirmative intelligent and knowing waiver.'" (further quotation marks omitted) (quoting *Robinson v. State*, 410 Md. 91, 107 (2009))). The court must satisfy itself that the defendant is "aware of the dangers and disadvantages of self-representation," that the defendant knows what he or she is doing, and that the choice to proceed without counsel "is made with eyes open." *Faretta v. California*, 422 U.S. 806, 835 (1975) (quotation marks and citation omitted). In other words, in contrast with most other issues that arise in litigation, a litigant with a right to counsel loses that right only by an express, knowing, and voluntary waiver of it, not just by failing to make an affirmative demand for it. A valid waiver of counsel in a criminal case "requires that the accused be informed of the range of allowable punishments for the charges against him or her[.]" *Lopez*, 420 Md. at 39-40 (quotation marks omitted).

B. Analysis

After trial, but prior to sentencing, appellant advised the court that he had fired his attorney. The court advised appellant that he was entitled to a lawyer through the Office of the Public Defender and asked if he would like a referral to that office, but appellant replied, "[n]o, thank you." The court asked appellant if he wanted to represent himself. Appellant said that he did not "understand the charges," but was "willing to settle the charges now" if the court brought "out the original charging document." The court

explained that the trial had occurred and that it was proceeding to sentencing. The court also noted that a presentence investigation had been ordered but that appellant "didn't cooperate with that[.]" The court stated, "I'm not going to order you to do that, but I would like to know more about you. You're a first offender." Appellant replied that he was "not an offender[,]" that he was "innocent[,]" that it was not up to the jury "to make the final decision[,]" and that he would "like to be released today." The court responded:

> I'm – I understand all that. We – unfortunately, we passed that point in your – I asked for a guideline range. The guideline range for your, you know, what you were convicted of is, you know, it's 10 years to 18 years.[6] It's really very, very serious.
>
> (Pause)
>
> THE COURT: The next step in this process is a sentencing, and you've asked to fire [defense counsel]. We've done that. You have a right to a lawyer. If you don't want to have a lawyer to help you, well, then, you don't. Would you like to think about it?

After further conversation, and after appellant objected "to any sentencing," the court stated that it would like to have a presentence report completed and asked appellant if he would cooperate with that process. The court offered to reschedule the sentencing, send a parole and probation agent to speak with appellant again, and to "have the public defender stand by to help" appellant. Appellant explained that at trial the court had "reserved the right to offer full acquittal to" him and that the court "could overturn" the jury's verdict "right now[.]" The court responded as follows:

> Well, I'm not inclined to do that. I – I think you have to give some respect to the jury's verdict. So for today I'm going to ask the clerk to make

[6] The parties do not dispute the accuracy of the court's statement that the guideline range was ten to eighteen years.

> a docket entry that says the motion for judgment of acquittal is denied. We'll reset this case for sentencing at a time convenient to everybody, and once again, I'm going to refer the Division of Parole and Probation – ask them to come over and speak with you one more time, and then we'll go to sentencing, and then you're certainly free to within the bounds of the law do what you have to do.

A second presentence hearing was held on November 15, 2022 to "resolve the issue of counsel[.]" The court offered to refer appellant to the Office of the Public Defender but appellant declined. The court continued to advise appellant that an attorney could be of great assistance to him in the sentencing process but also stated that if appellant was "going to waive [his] right to an attorney[,]" the court would "make arrangements to schedule this again and then we're going to impose the sentence." The State pointed out that appellant did not participate in the presentence investigation. Thereafter, the following colloquy occurred:

> THE COURT: I understand he didn't cooperate. I also understand the guidelines. The range of guidelines in your case are 10 to 20 years as I recollect.[7] So this is a very serious moment for you, and I would urge you as politely as I can and professionally as I can, you really need a lawyer, and you ought to get a lawyer. If you don't want the public defender, you know, maybe you and your folks could work something out, but – but it's important, and that's – that's really all I wanted to do today was to have this conversation with you so that you knew, and I'll have you sign that off and start making plans to schedule this for the sentencing hearing.

Appellant again asked to be released stating that he was not a threat "to any person in any community." The court reminded appellant that he was not in court for a bail hearing and stated:

[7] The parties do not dispute that the court overstated the maximum range under the guidelines by two years.

> You're here for sentencing, and as I just said, the – the bottom of your guideline sentence is 10 years and the top is 20 years, so we're talking serious, serious jeopardy for you.

In response, appellant asked the court "to discharge this situation[,]" and stated that he had not hurt anyone, that this was "a commercial crime based on 27 Code of Federal Regulations[,]" that he had "no accuser," and that he had never been under the jurisdiction of the court. The following exchange occurred:

> THE COURT: Okay. All of these are matters that you might take up on appeal. They're not going to happen today, so I think we're done for the day. I'll let the sheriff take you back and we'll schedule a day.
>
> [APPELLANT]: Your Honor, is it possible to release me in the meantime while we get this sorted out? I would like to get back to my family and to be able to support and help them.
>
> THE COURT: I'm not going to do that. I'm just –
>
> [APPELLANT]: Why not, sir?
>
> THE COURT: First, it's in my discretion. Secondly, I think it'd be an abuse of my discretion to let you out when you're looking at a possible sentence of 10 to 20 years in prison.

A sentencing hearing was held on December 9, 2022. Again, appellant appeared in proper person. At the beginning of the hearing, the court attempted to confirm appellant's decision to proceed without counsel:

> THE COURT: Okay. Not to go over this again. I – I've told you on a couple of occasions now that a lawyer can be a great deal of assistance to you in – in – even at this stage. You had a lawyer for the trial. You elected to discharge him. Subsequent of that, I've gone through everything I think that a lawyer can do to help you to make this better, and you don't want a lawyer. Is that where we are?
>
> [APPELLANT]: Well, Your Honor, I – I – I've stated multiple times that my citizenship is in Heaven, stated by the word of God, and I am really not

> under the jurisdiction of this Court, so having a lawyer is not going to help me here, sir.
>
> THE COURT: Okay. Well, what I propose to do is let's hear from the State and then we'll hear from you, and we'll take it from there, all right?

During the State's review of the case status, the prosecutor stated:

> So they found him guilty, and what did they find him guilty of? Sexual abuse of a minor and a third-degree sex offense. So we're talking about 35 years is the maximum. The guidelines as done by Probation and Parole are 10 to 18 years on the two counts.

The State recommended a sentence of incarceration for a period of twenty-five years for the sexual abuse of a minor and a consecutive suspended sentence for third-degree sexual offense. In his allocution, appellant maintained his innocence and asserted that the evidence did not establish his guilt. The court sentenced appellant to twenty-five years on the sexual abuse of a minor charge and suspended all but ten years. For the third-degree sexual offense, appellant was sentenced to a concurrent term of four years.

Appellant contends that the court repeatedly incorrectly advised him that the maximum sentence he faced based on the guidelines was ten to eighteen or ten to twenty years when, in fact, he faced a maximum sentence of thirty-five years. He maintains that he "was not fully apprised of how high the stakes were at sentencing[,]" that he was not fully aware of the dangers and disadvantages of self-representation, and that his waiver of his right to counsel was not "made with open eyes." According to appellant, because he was advised incorrectly about his possible sentence, his waiver of his right to counsel was not made knowingly.

Our review of the record makes clear that appellant knowingly, intelligently, and voluntarily waived his right to counsel at the sentencing hearing. At appellant's arraignment on January 7, 2021, where he was represented by counsel, he was properly advised that the charge of sexual abuse of a minor was "a felony for which the sentence can be up to 25 years in the Division of Corrections."[8] Also at that arraignment, appellant was properly advised that for the charge of third-degree sexual offense, a felony, he could "receive ten years in the Division of Corrections."[9] All of the subsequent post-trial references by the court were to the range of potential sentences pursuant to guidelines prepared by the Division of Parole and Probation.

In the context of Md. Rule 4-215(a), Maryland's Supreme Court has held that advisements may be given properly to a defendant by different judges of the same court on a piecemeal basis. *Broadwater v. State*, 401 Md. 175, 201-02 (2007). *See also Gregg v. State*, 377 Md. 515, 554-55 (2003) (holding that Rule 4-215 was satisfied cumulatively by advisements given by two circuit court judges over the course of two hearings). In *Broadwater*, the Court acknowledged that a waiver of the right to counsel may be found invalid if a reviewing court is persuaded that the defendant could not have made an

[8] CR § 3-602(c) provided that a person convicted of sexual abuse of a minor was guilty of a felony and "subject to imprisonment not exceeding 25 years."

[9] CR § 3-307(b) provided that a person convicted of third-degree sexual offense was guilty of a felony and "subject to imprisonment not exceeding 10 years." At the arraignment, appellant was also advised that for the felony charge of second-degree rape he could "receive 20 years in the Division of Corrections." The jury acquitted appellant of that charge.

informed decision due to substantial confusion fostered by a serialized approach to rendering the required advisements. *Broadwater*, 401 Md. at 202.

Here, the court properly advised appellant of the maximum penalty for each charge at the arraignment. The court's subsequent references to the potential range of sentence specifically identified the range as a guideline. Moreover, at the sentencing hearing, the prosecutor clearly stated that for sexual abuse of a minor and third-degree sexual offense, appellant was facing a maximum of thirty-five years and that the guidelines were ten to eighteen years on the two counts. We are convinced that there was no substantial confusion preventing appellant from making an informed decision with regard to the waiver of counsel. We conclude that appellant's decision to waive his constitutional right to counsel was knowing, intelligent, and voluntary. The circuit court did not abuse its discretion in permitting appellant to waive counsel at sentencing.

JUDGMENTS OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.