Circuit Court for Washington County
Case No. 21-K-16-052397

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 95

September Term, 2017

DAVID PAUL BICKFORD

v.

STATE OF MARYLAND

Meredith,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: May 15, 2018

This appeal arises from a two-day jury trial on January 3-4, 2017, and the subsequent conviction of appellant David Paul Bickford ("Bickford") on counts of sexual abuse of a minor and multiple counts of video surveillance with prurient intent.[1] On March 27, 2017, the Circuit Court for Washington County sentenced Bickford to twenty-five years' incarceration for the sexual abuse conviction, with all but fifteen years suspended, plus five years' probation upon release. At the sentencing hearing, the court merged with the sexual abuse conviction the remaining twenty counts of visual surveillance with prurient intent. Bickford timely appealed to this Court and asks that we review three issues,[2] which we have reworded as follows:

1. Whether the trial court erred in admitting evidence of prior salacious conduct.
2. Whether the trial court erred in admitting evidence of Bickford's internet browsing activities found on his iPhone.

[1] Bickford was originally charged with the above-mentioned counts, as well as one count of possession of child pornography, for which the circuit court granted a defense motion for acquittal, and one count of sexual solicitation of a minor, for which the jury acquitted Bickford in its verdict.

[2] Bickford presented the following questions for our review:

1. Did the trial court err in admitting prejudicial "other bad acts" evidence?
2. Did the trial court err in admitting other highly prejudicial evidence?
3. Was the evidence legally insufficient to sustain the convictions?

3. Whether the evidence was insufficient to sustain the convictions for "all counts that depended upon video surveillance in the bathroom."

BACKGROUND

On December 14, 2015, Bickford's daughter -- fifteen-year-old C.B. ("C.B." or "the victim") -- went to the Hagerstown Police Department. She told police officers that she had been doing homework on her father's laptop computer and found several photos of herself in the bathroom of her home in Hagerstown, where she lived with her father. Some of the photos captured her partially or completely nude. Police questioned Bickford and ultimately confiscated several electronic devices, including Bickford's laptop, iPhone, and two external hard drives.

In February of 2016, after police completed a forensic analysis of files stored on Bickford's electronic devices, Bickford was arrested and charged with (1) sexual abuse of a minor under Md. Code (2012 Repl. Vol., 2015 Supp.), Criminal Law Art. ("CL") § 3-602(b)(1); (2) sexual solicitation of a minor; (3) possession of child pornography; and (4) twenty-three counts of visual surveillance with prurient intent ("private place") under CL § 3-902(c). At trial, the State introduced into evidence several videos and other files recovered from Bickford's laptop computer, iPhone, and two external hard drives, as well as witness testimony from C.B. and the detectives and analysts who investigated C.B.'s case. Bickford also testified on his own behalf.

At trial, C.B. testified that she had moved with her father from Martinsville, West Virginia to Hagerstown, Maryland sometime in August of 2015 and began attending high

school there. She explained that her father decided to renovate parts of the house, including the family's only bathroom, where parts of the drywall were damaged. Sometime in October, C.B. noticed activity on her father's computer and TV. She testified that the TV appeared to show a "live-feed" video of the family's bathroom. C.B. entered the bathroom and found a small device in a hole in the wall between the shower and toilet. C.B. said that she went to her father and told him about the device, and that he told her that it was a "pipe alarm," which he had obtained from work, and that he would get rid of it.

Both C.B. and Bickford testified that Bickford had often disciplined C.B. by taking away her iPhone. Bickford said that after they moved to Hagerstown, he had taken her phone from her multiple times and put it in an unlocked cupboard, but that he believed C.B. continued to use her phone when she was not supposed to have it. He testified that, during one of the times he had taken C.B.'s iPhone, he went through her messages and found that C.B. was messaging a boy named John on an application called SnapChat. Although he could not find any inappropriate pictures on C.B.'s phone, Bickford testified that he found an ongoing, sexual text conversation between C.B. and John that indicated to Bickford that John had been asking C.B. to send nude pictures of herself to him. According to Bickford, the content of the messages indicated that C.B. had complied and sent inappropriate pictures to John. C.B. conceded during her testimony that she sent John "partially clothed" pictures and that her father had punished her by taking her phone away from her again. Bickford's primary contention at trial was that his daughter indicated to

him that she took the pictures of herself in the family's bathroom. He testified that he set up a camera in the bathroom in order to catch her on her phone.

C.B. testified that, the following December, while she was using her father's laptop computer to do her homework, she came across a photo album of pictures of herself in the family's bathroom, some of which showed her completely nude. She was able to locate the folder (labeled "CHIDE") where at least some of the images were stored. She said that after discovering the photos, she "tried to stay calm" and called her mother. They made plans for her mother to pick her up to go to lunch the following day. C.B. said that after she got off of the phone, she felt awkward and tense toward her father, and that he asked her what was wrong. C.B. said she confronted her father about the photos, and that he told her that he was no longer satisfied with pornography and wanted to see a virgin. According to C.B., her father acted nervous prior to C.B. leaving to go to lunch with her mother and that he asked her not to tell her mother about his reason for setting up the camera. C.B. said that, at some point while she was in her mother's car, Bickford told her mother that he had set up a camera in their bathroom because he believed C.B.'s older brother, who had recently moved in with them, was doing drugs in the bathroom and that he was not trying to monitor C.B.

The prosecutor asked C.B. a number of questions related to Bickford's conduct and remarks during the few years prior to C.B.'s discovery of the hidden camera. She testified that when she was approximately eleven or twelve years old and she and her father still lived in West Virginia, "He'd ask me if I'd ever . . . If I would ever have sex with him."

C.B. said that, around that same time period, after she would get into the shower, Bickford often got into the shower with her. She explained that, when she was around the age of thirteen, she started telling Bickford no when he would ask to shower with her and that she wanted to shower alone.

C.B. also described two other interactions with Bickford of a sexual nature. One such instance occurred after her mother had taken her shopping for new clothes. C.B. testified that she showed Bickford her new outfits and he told her that watching her try on clothes gave him a "boner," which she interpreted to mean "erection." During Bickford's direct examination testimony, he denied ever making that statement to C.B. and said that, at most, he would sometimes tell C.B. that she looked nice or "sexy," because he wanted her to feel good about her appearance. In addition, C.B. said that she asked Bickford for her iPhone back after he had taken it away, and that he said that he would return the phone to her if she gave him a "blow job." Bickford testified that he never requested that C.B. perform oral sex on him. He explained that, in one instance, he became irritated after C.B. repeatedly asked for her iPhone back, and that he told her to "suck it" as a way of saying no.

During the State's presentation of its case, Sergeant Howard testified as an expert witness in data recovery and computer forensics. He stated that he had recovered the remnants of a folder entitled "CHIDE" on Bickford's laptop, which included numerous "bathroom videos." He located both short and long clips cut from several original videos, and that all of the clips featured the same young girl while she was getting in and out of

the shower and sitting on the toilet. He testified that the videos appeared to have been originally recorded on Bickford's iPhone, which was, in turn, recording a screen of another devices, such as a TV displaying a "live feed." He explained that the "bathroom videos" appeared to have been created between October and December of 2015, and that the editing of the videos caused a temporary file to remain on the computer even after someone had attempted to delete the CHIDE folder. Although the camera appeared to be positioned near the floor, pointing upward, and at an angle that often did not show the person's face captured in the video, C.B. identified herself in most of the videos shown to her at trial. Regarding one video in which a "Tinkerbell" blanket covered the body of the person in the shot, C.B. explained that she started bringing the blanket with her to cover herself while getting in and out of the shower in case there was a camera.

Detective Duffy, who was admitted as an expert in cellular analysis and data recovery, testified that he recovered the online browsing history from Bickford's iPhone. He indicated that Bickford had viewed numerous pornographic websites and videos relating to father-daughter sex and incest. Further, he recovered evidence that Bickford had searched for sites of this nature, and that he had performed Google searches using search terms such as "Do girls want to have sex with their dad?" During his testimony, Bickford's explanation for his searches and online activity related to father-daughter sex was that it was the fastest way to get to "Japanese pornography."

Sergeant Howard also testified regarding a video he recovered from Bickford's external hard drives that were originally recorded on Bickford's iPhone. The forty-eight

second video showed what appeared to be an adult male rubbing lotion or cream on a female child's buttocks from behind her. He testified that the video prominently featured the girl's buttocks, anus, and vagina, and that, at one point, she covers her vagina with her hand and then subsequently removes it. C.B. testified that, when she still living with her father in West Virginia, Bickford told her to undress after they arrived home from visiting family in New Jersey so that he could put cream on flea bites on her body caused by being around her uncle's dogs. C.B. said that Bickford told her that he was using the flashlight on his phone and that she did not know that he was recording. She denied asking Bickford to put cream on her and testified that she was thirteen years old at the time and old enough to apply the cream herself. When Bickford testified, he claimed that the reason he had the video was that he was unfamiliar with how to use the flashlight function on his new iPhone, and that he knew the light would come on in the video function. He said that he deleted the video a week or so later when he realized it was still on his phone and that the video had been transferred to his hard drives during a data recovery of his devices.

DISCUSSION

I. Bickford's Challenge to the Circuit Court's Decision Not to Exclude Testimony Related to Bickford's Prior Sexual Conduct is Not Preserved.

First, Bickford argues that the trial court erred in admitting evidence of alleged "other bad acts." *See* Md. Rule 5-404.[3] Prior to trial, Bickford moved *in limine* to preclude

[3] Rule 5-404(b) provides the following:

the State from introducing evidence of conduct that allegedly occurred in West Virginia before the family moved to Maryland. Bickford argues before this Court that five of the alleged incidents that Bickford sought to preclude in his pretrial motion should not have been admitted at trial, including evidence that he: (1) showered with the victim; (2) would ask the victim to have sex with him; (3) frequently talked about sexual topics with her; (4) told the victim that he got an erection after watching her try on clothing[4]; and (5) slept in the same bed with her when she was beyond an appropriate age to do so.[5] At Bickford's motion *in limine* hearing, Bickford argued that the risk of unfair prejudice from evidence of these alleged incidents outweighed their probative value, and that presenting these allegations at trial would confuse the jury.

> Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

[4] There is conflicting evidence in the record regarding whether this conduct occurred in West Virginia or Maryland, but it does not appear to be part of the conduct for which Bickford was charged.

[5] Bickford challenges the admission of three other incidents of alleged prior conduct, including that Bickford (1) "took photographs of [C.B.] in her underwear" (separate from the allegations of his hidden surveillance of her); (2) "grabbed her upper thigh when in his truck"; and (3) "touched himself under a blanket when watching a movie" with her. Bickford does not mention in his brief, nor can we locate in the record, any point during the trial that the State introduced evidence of these allegations. Because none of this evidence was admitted at trial, we need not address these allegations on appeal.

At the hearing on Bickford's motion, the State argued that evidence of prior conduct demonstrated Bickford's motive and intent associated with his visual surveillance and sexual exploitation of the victim. The trial court agreed with the State's argument that the evidence of other bad acts fell within the exceptions to Md. Rule 5-404(b).[6] The court noted the importance of "the context of [the] alleged sexual exploitation." Specifically, the court found that the evidence of prior conduct provided context of the alleged "infatuation that Mr. Bickford had for his minor daughter that escalated . . . from when she was young[er] and [unable to] prevent her father from showering with her or doing these other inappropriate things, to when she did insist on her privacy . . . ." That context was probative of Bickford's motive and intent underlying the video recordings.

Bickford argues on appeal that the trial court erred in admitting these five "prior bad acts" because the evidence (1) "was irrelevant (Maryland Rule 5-402)"; (2) "was far more prejudicial than probative (Maryland Rule 5-403)"; and (3) "represented evidence of 'other crimes, wrongs, or acts' that is inadmissible in the absence of qualifying under some specified exception pursuant to Maryland Rule 5-404(b)." Although Bickford raised these arguments before the circuit court during the hearing on his motion *in limine*, he failed to object on these grounds when the evidence was admitted at trial.

[6] Bickford argues on appeal that the trial court never specified the precise exception that the evidence fell within, however, the State argued in its response to Bickford's motion *in limine* that exceptions for motive and intent applied to this evidence, and both of the parties and the trial court discussed the introduction of this evidence within that context. Additionally, Bickford's counsel did not request that the court clarify which exception the court had applied when it denied Bickford's motion.

With the exception of certain jurisdictional defects, we will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). The purpose of the preservation rule "is to 'prevent[] unfairness and requir[e] that all issues be raised in and decided by the trial court." *Peterson v. State*, 444 Md. 105, 126 (2015) (*Grandison v. State*, 425 Md. 34, 69 (2012)).[7] In *Robinson v. State*, the Court of Appeals explained that the Rule "requires an appellant who desires to contest a court's ruling or other error on appeal to have made a timely objection at trial. The failure to do so bars the appellant from obtaining review of the claimed error, as a matter of right." 410 Md. 91, 103 (2009).

Similarly, Rule 4-323(a) provides, in part, that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." As the Court in *Peterson* said, "An appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should counsel 'rely on this Court, or any reviewing court, to do their thinking for them after the fact.'" 444 Md. at 126 (quoting *Grandison*, 425 Md. at 70). For example, in *Fone v. State*, we held that the defendant failed to preserve his argument that it was error to admit testimony about activity on the defendant's computer before and after sharing

[7] The Court in *Peterson* noted that our "prerogative to review an unpreserved claim of error . . . is to be rarely exercised and only when doing so furthers, rather than undermines, the purposes of the rule." *Id.* at 103–04 (citing *Jones v. State*, 379 Md. 704, 714 (2004)) (Emphasis added). Bickford does not argue on appeal that his challenge to the court's admission of his prior conduct falls within an exception to this general rule.

pornographic images of children, where the defendant failed to object during that portion of the detective's testimony. 233 Md. App. 88, 113 (2017).

In his motion *in limine*, Bickford sought to preclude the State from introducing evidence of his alleged conduct, which was similar in nature to some of the alleged conduct for which he was on trial. Maryland Rule 4-323 adds that "[t]o properly preserve an objection to the admission of evidence, . . . a party must object at the time the evidence is introduced [. . .] Otherwise, the objection is waived." Md. Rule 4-323(a). The requirement to object when the evidence is offered at trial exists even when the party previously challenged the evidence in a motion *in limine*. *See Reed v. State*, 353 Md. 628, 637 (1999) (quoting *Prout v. State*, 311 Md. 348, 356 (1988)) ("[W]here a party makes a motion *in limine* to exclude irrelevant or otherwise inadmissible evidence . . . , 'the party . . . ordinarily must object at the time the evidence is actually offered to preserve [its] objection . . . ."); *Fone*, 233 Md. App. at 113. We explained this rule in *Hickman v. State*:

> Whether the motion *in limine* is made before trial or during trial, a court's ruling which has the effect of admitting contested evidence does not relieve the party, as to whom the ruling is adverse, of the obligation of objecting when the evidence is actually offered. *Failure to object results in the non-preservation of the issue for appellate review*.

76 Md. App. 111, 117 (1988) (citing *Simmons v. State*, 313 Md. 33 (1988) (Emphasis added).

In order to preserve the five evidentiary issues that Bickford raises on appeal, therefore, Bickford was required to object to the entry of evidence when it was admitted at

trial.[8] First, Bickford's counsel did not object to any evidence admitted by the trial court that Bickford had previously asked the victim to have sex with him and frequently discussed sexual topics with her.[9] For instance, during direct examination of the victim, the State asked, "[D]id your [d]ad ever . . . ask you any other questions about sex or talk to you about sex?" C.B. responded, "[H]e'd ask me if I'd ever . . . if I would ever have sex with him." Bickford's counsel did not object during this line of questioning. We can find no instance in the record in which Bickford challenged evidence that he "would ask the victim to have sex with him" or that he frequently talked about sexual topics with the victim.

Second, with respect to any objections raised regarding the three other alleged instances of prior misconduct introduced at trial -- namely, that Bickford told the victim he had an erection while watching her try on clothing, slept in the same bed with the victim, and had taken showers with the victim -- Bickford failed to state the grounds at trial that he raises on appeal. It is true that, in Maryland, a party need not state the grounds for an objection "unless the court, at the request of a party or on its own initiative, so directs."

[8] Further, no matter how many times the court admitted evidence of this nature, Bickford was required to object each and every time in order to preserve the issue for appeal. *See Fone*, 233 Md. App. at 113 (2017) (quoting *Wimbish*, 201 Md. App. at 261 (2011)) (Internal quotation marks omitted) ("[T]o preserve an objection, a party must either object each time a question concerning the [matter is] posed or . . . request a continuing objection to the entire line of questioning.").

[9] In his brief, Bickford treats the allegation that Bickford told the victim that he had an erection while watching her try on clothes as separate from his challenge to evidence that Bickford frequently initiated sexual discussions with the victim. We address that allegation separately, as well.

Md. Rule 4-323(a); *see also Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997) (Citations omitted) ("Generally, Maryland litigants are not required to state the specific ground for an objection unless requested to do so by the trial court. [. . .] Consequently, if a court overrules an objection, all grounds for the objection may be raised on appeal."). If the court asks for or the party volunteers "particular grounds for an objection," however, "it is deemed to have waived all other grounds not mentioned." *Pitt v. State*, 152 Md. App. 442, 463 (2003), *aff'd*, 390 Md. 697 (2006) (Citations omitted). In *Anderson*, we said:

> If counsel provides the trial judge with specific grounds for an objection, the litigant may raise on appeal only those grounds actually presented to the trial judge. All other grounds for the objection, including those appearing for the first time in a party's appellate brief, are deemed waived.

115 Md. App. at 569 (Citations omitted).

Bickford now argues that the admission of evidence of "other bad acts" that allegedly occurred in West Virginia was error because its probative value was outweighed by the risk of unfair prejudice, and because the admission of such evidence served only to confuse the jury. *See* Md. Rule 5-403. Bickford failed, however, to object on these grounds at trial. With respect to Bickford's challenge to evidence that he told the victim he had an erection while watching her try on new clothes, the following occurred at trial:

> [STATE'S ATTORNEY]: Okay. Did you show those outfits to your [d]ad?
>
> [C.B.]: Yes.
>
> [STATE'S ATTORNEY]: And did anything . . .
>
> [DEFENSE COUNSEL]: Objection. Time frame.
>
> THE COURT: Sustained.

> [STATE'S ATTORNEY]: Ah, when you were showing your [d]ad . . . outfits, were you living on Outer Drive or were you living in West Virginia?
>
> [C.B.]: There were multiple occasions. But some, yes, I was in . . . Hagerstown.
>
> [STATE'S ATTORNEY]: Okay. Was there ever a time that your [d]ad made any comments to you about your outfits or your clothing?
>
> [C.B.]: Yes.
>
> [STATE'S ATTORNEY]: Okay. And what, specifically, do you recall your [d]ad saying?
>
> [C.B.]: Ah, I would try on outfits and show them to him and at one point he said that it gave him a boner. [. . .] Erection. [. . .] I'm sorry. [. . .] I was trying to use his like actual words.

The only objection that Bickford's counsel made was to the absence of any "time frame" for the alleged incident, and the trial court sustained his objection. Similarly, when the State asked the victim about Bickford sleeping in the same bed with her, Bickford's counsel objected again to the lack of a "time frame." The trial court allowed the prosecutor to continue her line of questioning, and the victim subsequently explained the time frame.

Finally, when the State asked the victim during direct examination, "[W]hat about showering . . . . Did you generally shower by yourself?" Bickford's counsel objected, and the parties had the following exchange with the trial judge at the bench:

> [DEFENSE COUNSEL]: Your Honor, the basis of my objection is . . . I believe the State is leading the witness. There are ways of asking the question about other activities or whatever. But I mean she's leading her specifically with respect to certain alleged activities that the State wants her to testify about whether or not she would come up with those things on her own.

> THE COURT: Well, there was perhaps a little bit of leading. Considering the witness's age I didn't think it was too severe. The question at this point was: Do you shower alone? That's not suggesting the answer that I think the State wants. It's a way to bring up activities in the shower.
>
> [STATE'S ATTORNEY]: I'm simply trying to direct . . . the testimony. I mean this is testimony. It's not a forensic interview at Safe Place . . . .
>
> THE COURT: I think it would be a leading question if your question was: Did your father get in the shower with you? But yours was: Do you usually shower alone? It was not leading, so the objection is overruled. [. . .] So bear in mind [Defense Counsel's] objection with the next questions.
>
> [STATE'S ATTORNEY]: Okay.

The State continued its questioning of the witness, and Bickford's attorney made no other objection during C.B.'s testimony that Bickford, on numerous occasions, got into the shower with her before they moved to Maryland. The specific grounds stated by Bickford's counsel, therefore, related only to whether the State's questions were leading. Bickford does not argue that point on appeal.

In sum, even if we could find any merit in Bickford's arguments that the evidence was irrelevant, overly prejudicial, or not within any exception to the rule excluding "prior bad acts," none of these contentions are properly before us on appeal. For the allegations of prior conduct that were admitted, Bickford either did not object at trial or objected on some other ground not raised on appeal. Our Rules require parties to object to the admission of evidence "at the time the evidence is offered," and if particular grounds are requested by the court or volunteered by the party, all other grounds are waived. *See* Md.

Rule 4-323(a). Accordingly, Bickford waived his right to challenge on appeal the trial court's decision to admit evidence of alleged prior salacious conduct.

III. The Circuit Court Did Not Err in Denying Bickford's Objection on Relevancy Grounds.

Next, Bickford argues that the trial court erred by admitting "a laundry list" of Bickford's online activity on his iPhone. This history included evidence of his online searches, as well as pornographic websites and videos that he viewed in conjunction with those searches. At trial, Bickford's sole objection to the admission of his browser history was on the basis of relevance, pursuant to Rule 5-402. With the exception of a mere conclusory statement of this assertion, however, Bickford says little else about his relevance argument on appeal. Instead, he focuses almost entirely on his contention that, even if relevant, the evidence "was far more prejudicial than probative," pursuant Rule 5-403. As we have already explained, Bickford is not entitled to our review of grounds that he failed to raise before the trial court. *See Anderson*, *supra*, 115 Md. App. at 569 ("If counsel provides the trial judge with specific grounds . . . , the litigant may raise on appeal only those grounds actually presented to the trial judge."). We therefore address only one of Bickford's arguments on appeal -- that Bickford's browser history was irrelevant to the charges against him.

To be admissible, evidence must be relevant. *See* Md. Rule 5-401. The trial court, therefore, has no discretion to admit irrelevant evidence. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013). That determination involves asking whether the evidence was probative of a material fact, *see Williams v. State*, 342 Md. 724, 737 (1996),

meaning the evidence "makes 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." Md. Rule 5-401. That is, "the proffered item . . . [must] increase[] or decrease[] the probability of the existence of a material fact." *Snyder v. State*, 361 Md. 580, 591 (2000). Further, the trial court's relevancy determination is made "in conjunction with all other relevant evidence." *Id.* at 592. We review the trial court's determination of whether certain evidence is relevant *de novo*. *See State v. Simms*, 420 Md. 705, 724 (2011) (Citations omitted).

On direct examination by the State, after the prosecutor asked that Detective Duffy read the list of sites and search terms he recovered from Bickford's iPhone, defense counsel objected and the parties approached the bench. The trial judge asked Bickford's counsel, "So, what's the objection? I mean could there potentially be a grocery list [of] movies he went to or what . . . ." The following exchange occurred:

> [DEFENSE COUNSEL]: Yeah. Well, the question is what is the relevance of that particular information to this case?
>
> [STATE'S ATTORNEY]: It's relevant for intent Your Honor, I believe. If Detective Duffey articulates the web history, which indicates visiting numerous websites related to incest, . . . father/daughter sex . . . .
>
> THE COURT: That's what you're getting at.
>
> [STATE'S ATTORNEY]: Yes, Your Honor.
>
> THE COURT: Okay. Alright. Objection overruled. You may stand back.

The detective read a series of search terms and websites visited as a result of each search. He indicated that Bickford performed searches with the terms: "Do girls want to have sex with their dad."[10] He testified that after searching the terms, "men that fuck their daughter," Bickford visited the site "Incestvideo.com." The detective listed several other pornographic sites visited, including "Dadfuckdaughter.org," where Bickford accessed several "movies" with labels such as "Grandpa love granddaughter," among others. The detective went on to list a number of other pornographic sites, videos, and search terms related to father-daughter sex, as well as the rape and "deflowering" of young girls by family members.

We hold that Bickford's internet searches and browsing activity were relevant to the material facts pertinent to charges. Bickford was charged with multiple counts of surveillance with prurient intent under CL § 3-902, which required the State to prove that Bickford conducted visual surveillance of the victim "with prurient intent." *See* CL § 3-902(c). Clearly, Bickford's extensive searches and viewing of pornography depicting sex between fathers and daughters was probative of his intent and motivation underlying his decision to secretly record his daughter in the bathroom. Regarding the charge of sexual abuse of a minor under CL § 3-602,[11] the State was required to prove three elements, one

[10] The trial transcripts present each set of search terms as one long word. For clarity, we include spaces between each word.

[11] CL § 3-602(b)(1) provides the following: "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." Subsection (a)(4)(i) defines "Sexual abuse" as

of which was that he "sexually molested or exploited the victim by means of a specific act." *See Schmitt v. State*, 210 Md. App. 488, 496 (2013) (reviewing CL § 3-602(b)). Here, the State alleged that Bickford's abuse was by the sexual "exploitation." Bickford's interest in father-daughter sex was probative of whether Bickford "took advantage of or unjustly or improperly used [C.B.] for his own sexual benefit" when he recorded his daughter getting in and out of the shower or in allegedly requesting that she perform sexual acts on him. *See id.* at 502 (applying the meaning of "exploitation" under CL § 3-602(b)),

Finally, even if Bickford's challenge on Rule 5-403 grounds to the trial court's admission of his browsing history were preserved, his argument is unpersuasive. Bickford's support for his contention that the trial court abused its discretion consists primarily of a rebuke of society's tendency to "judge from a distance" and "throw[] stones from glass houses." He asserts that "[p]ornography is, by its very nature, an expression of/outlet for fantasy." The State provides the following response to Bickford's argument regarding the probative value of the evidence:

> Although this evidence is indeed inflammatory, there was nothing unfair about placing it before the jury. This was not ordinary pornography, nor was the evidence used for the purpose of needlessly embarrassing or shaming Bickford for exploring benign sexual fantasies. Instead, this evidence -- which related to a specific subset of pornography -- was highly relevant in demonstrating that Bickford had a sexual interest in his daughter, and in rebutting Bickford's claim that he acted innocently out of a fatherly desire to monitor and discipline his daughter.

"an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not."

Were this issue properly before us on appeal, we would agree with the State. Bickford's browser history was highly probative of his objective in secretly recording his daughter partially and completely nude, as well as in his sexual remarks and alleged requests, and whether the conduct for which he was charged was motivated by his own sexual benefit. Bickford's only objection at trial to the testimony regarding his browser history, however, was that it was irrelevant. Accordingly, we hold that the evidence of this prior conduct was relevant, and therefore, that the trial court did not abuse its discretion in admitting it.

IV. We Reject Bickford's Argument that His Conviction for Sexual Abuse of a Minor was Not Supported By Sufficient Evidence, But Hold that the State Failed to Establish Sufficient Evidence to Support His Conviction Under the Prurient Intent--Private Place Statute.

At the conclusion of the State's case, Bickford moved for a judgment of acquittal on all charges, which he renewed at the conclusion of all evidence, asserting that the evidence was insufficient to support either a conviction of child sexual abuse under CL § 3-602, or visual surveillance with prurient intent under CL § 3-902 ("prurient intent--private place"). First, he argued that the State failed to put forth evidence that Bickford "exploited" the victim under § 3-602(b).[12] His second argument, and the only issue which

[12] CL § 3-602(b)(1) -- prohibiting the "sexual abuse of a minor" -- provides that "[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." The statute defines "sexual abuse" as "an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not."

Bickford argues on appeal, is that the evidence did not establish that the conduct occurred in a "private place," which is defined by subsection (c)(5)(ii). On this topic, Bickford's counsel asserted

> [W]ith respect to the conducting the video surveillance, the statute that's involved here actually defines, rather specifically it enumerates the definition of private place. Now, as we know from the evidence that's been elicited to this point the videos were taken in the bathroom of a private residence.

Bickford's counsel went on to read portions of CL § 3-902(c) for the trial court, emphasizing the statute's definitions of the term "private place." The court questioned his argument during the following exchange:

> [DEFENSE COUNSEL]: It goes on to say, "Private place includes a tanning room, dressing room, bedroom or restroom." The location where it's alleged that the videos were taken does not fall into any of the prescribed locations in the statute. And, in fact, the statute seems to take great pains in excluding a private residence. Because, except for bedroom, there's no location inside a private residence that fits the definition of private place as outlined in the statute.
>
> THE COURT: Isn't a restroom the same as the bathroom?
>
> [DEFENSE COUNSEL]: No, Your Honor. A restroom is a private . . . is a private facility in a mall or restaurant, or a . . . public place for the use of bathroom facilities. Bathroom and restroom are not synonymous in my opinion. I would suggest that when . . . Your Honor has guests at his house, they don't ask usually, "Can I use the restroom?" They say, "Can I use the bathroom?"
>
> When you go to [a] restaurant, if you need the facilities, most of the time you will say to the waitress or waiter, "Can you direct me to the restroom?" And that's because there is, in fact, a distinction between the two.

> And, as I said, the legislature seems to have taken great pains in excluding almost all of the areas of a private residence from the general definition in the statute of a private place . . . .

Bickford makes a similar argument on appeal -- that the State failed to prove that the surveillance occurred in a "private place" pursuant to CL § 3-902(a), because a bathroom in a private residence is not a "restroom" under subsection (a)(5)(ii). As we have previously explained, "[t]he standard for appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Fone*, 233 Md. App. at 115 (quoting *Larocca v. State*, 164 Md. App. 460, 471–72 (2005). To the extent Bickford's sufficiency of the evidence argument is premised upon statutory interpretation, we review the issue *de novo*. *Harrison-Solomon v. State*, 216 Md. App. 138, 146 (2014), *aff'd*, 442 Md. 254 (2015) (citing *Moore v. State*, 388 Md. 446, 452 (2005)) ("To the extent that our decision involves issues of statutory interpretation and questions of law, our review is *de novo*."). Bickford makes no discernible argument on appeal that the evidence was insufficient to support his conviction under CL § 3-602, and we therefore focus our analysis on the sufficiency of the evidence to support his conviction under CL § 3-902(c) -- prurient intent--private place.

CL § 3-902 provides, in pertinent part, the following:

> (a)(1) In this section the following words have the meanings indicated.
>
> * * *

(4) "Private area of an individual" means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual.

(5)(i) "Private place" means a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy, in:

1. an office, business, or store;
2. a recreational facility;
3. a restaurant or tavern;
4. a hotel, motel, or other lodging facility;
5. a theater or sports arena;
6. a school or other educational institution;
7. a bank or other financial institution;
8. any part of a family child care home used for the care and custody of a child; or
9. another place of public use or accommodation.

(ii) "Private place" includes a tanning room, dressing room, bedroom, or **restroom**.

(6)(i) "Visual surveillance" means the deliberate, surreptitious observation of an individual by any means.

(ii) "Visual surveillance" includes surveillance by:

1. direct sight;
2. the use of mirrors; or
3. the use of cameras.

(iii) "Visual surveillance" does not include a casual, momentary, or unintentional observation of an individual.

* * *

(c) **A person may not with prurient intent conduct or procure another to conduct visual surveillance of**:

(1) **an individual in a private place without the consent of that individual**; or

(2) the private area of an individual by use of a camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the individual would not

> be visible to the public, regardless of whether the individual is in a public or private place.

CL § 3-902(a)–(c) (Emphasis added).

Bickford's primary contention on appeal is that neither subsection (i) or (ii) of CL § 3-902(a)(5) include a "residential bathroom" as a "private place."[13] As the only support for his interpretation of "restroom," Bickford's asserts the following:

> "[T]he statute does not specifically enumerate "bathroom" (as distinct from 'restroom,' which *is* enumerated) in a private residence as a location that is covered under its prohibition against visual surveillance. Indeed the language is painstakingly particular and does not include the term "bathroom." [. . .] [T]he issue is one of 'notice' in relation to the cannon of statutory construction, *inclusion unius est*

[13] Referring to subsection (c)(2), the State asserts asserts that, "[b]ecause this statute creates criminal liability for recording a person's [']private area['] without [his or her] consent regardless of the setting, Bickford's conduct fell squarely within this provision as well." *See* § 3-902(c)(2). Subsection (c)(2) prohibits the use of a camera to view the "private area" of an individual without that person's consent. "Private area" is defined as "the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of an individual." § 3-902(a)(4). Subsection (c)(2) does not require that the surveillance occur in any particular location. In other words, a person may be guilty of violating § 3-902 if he or she acts "with prurient intent" and "without the consent of the individual" to "conduct . . . visual surveillance of" either (1) "an individual in a private place;" or "(2) the private area of an individual by use of a camera . . . under circumstances in which a reasonable person would believe that the private area of the individual would not be visible to the public." *See* § 3-902(c).

Based on our review of the record, however, Bickford was apparently charged under the clause prohibiting surveillance in a "private place." The State does not explain why it never mentioned subsection (c)(2) before the trial court during its response to Bickford's motion for acquittal, which focused on the definition of a "private place," or when the parties discussed jury instructions with the court. The trial judge instructed the jury that to convict Bickford for surveillance with prurient intent, they were required to find that the surveillance occurred in a "private place" and reviewed the definition of "private place" under subsection (a)(5)(i). The jury never received an instruction on the charge under subsection (c)(2).

> *exclusion alterius*, which does not permit the addition to enumerated language to the statute under consideration for the purposes of broadening its reach.

(Footnote omitted).

Bickford provides no other authority for his contention that the term "restroom" excludes a bathroom in a private residence. Likewise, the State's argument that residential bathrooms fall within the meaning of "restroom" under CL § 3-902(a)(5)(ii) is based primarily on its contention that excluding residential bathrooms from the meaning of "private places" would lead to absurd results, because subsection (a)(5)(ii) includes the term "bedroom," which is associated with private residences. The dispute between Bickford and the State, therefore, is whether the term "restroom" includes only public, as opposed to residential, bathrooms. Our task, therefore, is one of statutory construction.

We have previously explained:

> A court's primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.
>
> To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the statute.
>
> * * *
>
> We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.

State v. Dixon, 230 Md. App. 273, 281 (2016) (quoting *Merchant v. State*, 448 Md. 75, 94–95 (2016)).

Regardless of any ambiguity or lack thereof, our "interpretation must be reasonable and consonant with logic and common sense," and we must "seek to avoid construing a statute in a manner that leads to an illogical or untenable outcome." *Webster v. State*, 359 Md. 465, 480 (2000) (quoting *Lewis v. State*, 348 Md. 648, 654 (2000); *see Dixon*, 230 Md. App. at 281 (quoting *Merchant*, 448 Md. at 95). We begin by "assign[ing] words their ordinary and natural meaning." *Nesbit v. Gov't Emp's Ins. Co.*, 382 Md. 65, 73 (2004) (citing *Lewis*, 348 Md. 648 at 653).

The statute provides, expressly, that the term "private place" *means* a "room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy," if that room is located in one of nine primarily public locations "place[s] of public use or accommodation." *See* § 3-902(a)(5)(i)(9). Next, under subsection (ii), the statute provides four types of rooms that are expressly included under the statute's definition of "private place." CL § 3-902(a)(5)(ii). Even though the other rooms listed appear to be associated with publicly accessible places, the term "bedroom" is included without any qualification or context. At first glance, the existence of the term "bedroom" seems to suggest that the statute could apply to rooms within residential homes. However, every location enumerated in (a)(5)(i), and the other three "disrobing rooms" under (a)(5)(ii), are primarily associated with public places, and the term "bedroom" is the only language in § 3-902 that could possibly be associated with private homes. Another

construct of the word, "bedroom" -- and, in our view, the more reasonable one -- is that it refers to bedroom in a public facility, such as hotels, motels, lodging facilities and child care homes listed in subsection (a)(5)(i).

Turning to the meaning of "restroom," we note that where a term at issue has no statutory definition, we assign to it "its plain and ordinarily understood meaning." *Sweet v. State*, 163 Md. App. 676, 687 (2005). To determine the ordinary meaning of "restroom," "we may consult the dictionary and we may consider whether the literal or usual meaning of the words is consistent with the context, objectives, and purpose of the statute." *See id.* (Citations omitted).[14] The *Random House Dictionary of the English Language*, 2d ed. (1983) defines the term "rest room" as "rooms or a room having a washbowl, toilet, and other facilities for use by employees, visitors, etc., as in a store, theater, or office." The *American Heritage Dictionary*, (4th ed. 2006) defines "restroom" as "[a] room equipped with toilets and lavatories for public use." Currently, *Merriam-Webster's* online dictionary defines "restroom" as "a room or suite of rooms in a public space providing toilets and lavatories: a public bathroom." *See Merriam-Webster.com*, "Restroom," available at: https://www.merriam-webster.com/dictionary/restroom?src= search-dict-box (last visited April 30, 2018).

All of these definitions suggest, as Bickford argues, that the term "restroom" refers ordinarily to bathrooms in public places. Even so, a definition from a dictionary is "only

[14] Although both sides focus their arguments on the meaning of "restroom," neither side presents us with a definition of "restroom" from any particular source.

a starting point to ascertaining the Legislature's intent," and "it is not necessarily the end." *Deibler*, 423 Md. 54, 69 (2011) (quoting *Schreyer v. Chaplain*, 416 Md. 94, 101 (2010). Even if we accepted Bickford's assertion that the term "restroom" generally refers to "toilet facilities" only within public settings,[15] that observation does not require that we conclude that the legislature intended to exclude bathrooms in residential homes. We do not "confine strictly our interpretation of a statute's plain language to the isolated section alone," however. *See Dixon, supra*, 230 Md. App. at 281. In light of "the context of the statutory scheme," the definition of "private place" under § 3-902(a)(5) is ambiguous with respect to whether a "restroom" not located in one of the locations listed under § 3-902(a)(5)(i) could constitute a "private place" within the reach of § 3-902(c)(1). We therefore turn to the "legislative history . . . and the purposes upon which the statutory framework was based." *Deibler*, *supra*, 423 Md. at 60.

Subsection (a)(5)(i) makes apparent at least one of the legislature's objectives -- to prohibit the nonconsensual surveillance of a person in "a room in which a person can

[15] Despite Bickford's counsel opinion that people "usually" say in particular contexts, we note that one can easily find examples of the use of the term "restroom" in the context of an individual person's home. For instance, courts in several jurisdictions have used, without interpreting, the term "restroom" to refer to a "toilet facility" in a person's home. *See, e.g., Darland v. Staffing Res., Inc.*, 41 F. Supp. 2d 635, 637 (N.D. Tex. 1999) ("When they finally arrived at Darland's house, she allowed Dunn to go inside, ostensibly to use her restroom."). *Smith v. State*, 536 S.E.2d 561, 562 (Ga. App. 2000) ("[The defendant] then asked to use her restroom . . . returned from the restroom with his hand in his pocket, told her he had a gun, and forced her into her bedroom."); *LeMasters v. People*, 678 P.2d 538, 539 (Colo. 1984) ("Several minutes later, the defendant asked the victim if he could use her restroom. She replied in the affirmative and directed him to the restroom.").

reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy," in "place[s] of public use or accommodation." *See* CL § 3-902(a)(5)(i) & (c)(1). Subsection (a)(5)(ii) adds that these private places "*include*[] a tanning room, dressing room, bedroom, or restroom." (Emphasis added). Notably, based on their ordinary meanings, all four types of rooms listed under subsection (a)(5)(ii) are rooms in which people commonly "fully or partially disrobe." *See* § 3-902(a)(5)(i). Our review of the legislative history indicates that this similarity is not a coincidence.

Prior to an amendment in 2003, what is currently § 3-902(a)(5)(i) read as follows:

> **Private place means a dressing room, bedroom, or rest room, in**:
>
> (i) An office, business, or store;
> (ii) A recreational facility;
> (iii) A restaurant or tavern;
> (iv) A hotel, motel, or other lodging facility;
> (v) A theater or sports arena;
> (vi) A school or other educational institution;
> (vii) A bank or other financial institution;
> (viii) Any part of a day care home used for the care and custody of a child; or
> (ix) Another place of public use or accommodation.

CL § 3-902 (2002) (Emphasis added); *see* Maryland Laws of 2003, Ch. 165. (H.B. 544). A "private place," therefore, was defined only as "a dressing room, bedroom, or rest room *in* . . ." one of the same nine places of public use or accommodation in the current statute. *See* § 3-902(a)(5)(i) (Emphasis added). The 2003 amendment replaced the phrase "dressing room, bedroom, or rest room" with the broader description, "a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable

expectation of privacy." *See* H.B. 544, 2003 Leg. Sess. (Md. 2003), Enrolled Bill, at 2, http://mdlaw.ptfs.com/awweb/pdfopener?md=1&did=13898 [https://perma.cc/2DEW-KNSN]. The General Assembly kept the short list of specific "disrobing rooms," but moved it to what is now subsection (a)(5)(ii) and added "tanning rooms." The 2003 amendment, however, was enacted "in response to a specific incidence of visual surveillance at a tanning salon." *See* H.B. 544, 2003 Leg. Sess. (Md. 2003), Revised Fiscal and Policy Note, at 2, http://mdlaw.ptfs.com/awweb/pdfopener?md=1&did=13898 [https://perma.cc/2DEW-KNSN] ("This bill is in response to a specific incidence of visual surveillance at a tanning salon."). Accordingly, the purpose of the amendment, which removed the list of rooms at issue here from the main definition and added them back in under a separate subsection, was to expand the types of private rooms within the list of publicly accessible locations that fall within the definition of "private place."

Thus, there is no question that a bedroom "in" a "hotel, motel, or other lodging facility," *see* § 3-902(a)(5)(i)(4), or a "day care home used for the care and custody of a child," *see* § 3-902(a)(5)(i)(8), would constitute a "private place" under the statute. Likewise, the statute expressly protects a dressing room or a tanning room "in" a "business[] or store," and a restroom "in" a "restaurant or tavern" or "another place of public use or accommodation." CL § 3-902(a)(5)(i). Other kinds of rooms within other "place[s] of public use or accommodation" may also constitute "private places" under the statute, if the room is one "in which a person can reasonably be expected to disrobe and has a reasonable expectation of privacy." *See* § 3-902(a)(5)(i).

Our reading of subsection (a)(5)(ii) as supplementary to the definition in subsection (a)(5)(i) is consistent with the principles of construction laid out by the Court of Appeals in *Tribbit v. State*, regarding the statutory significance of the words "including" and "means."

> When statutory drafters use the term "means," they intend the definition to be exhaustive. [*Hackley v. State*, 389 Md. 387, 393 (2005)]. By contrast, when the drafters use the term "includes," it is generally intended to be used as "illustration and not . . . limitation." *Id.*

403 Md. 638, 647-48 (2008).[16]

Here, the subsection (a)(5) uses both terms; "private place means a room in which a person can reasonably be expected to disrobe *in* a place among those listed under (a)(5)(i). Those disrobing rooms in which a person would have a reasonable expectation of privacy "include[] a tanning room, dressing room, bedroom, or restroom." § 3-902(a)(5). The list

[16] Noting a distinction from a prior case in which the statute used the terms "means" and "includes" and provided two alternative definitions, the Court in *Tribbit* said:

> The statute at issue in *Carmel Realty* had two sections, the second of which "introduce[d] a new section" and a "new set of public bodies" that were distinct from those in the first section. By contrast, § 3–602(a)(4)(ii) does not list any crimes that would not otherwise constitute sexual exploitation or molestation.

Id. at 658. The statutory structure in *Tribbit* is applicable here. The rooms listed under CL § 3-902(a)(5)(ii) -- tanning room, dressing room, bedroom, and restroom – are not a new set of "private places," but instead, provide examples of the language used in subsection (a)(5)(i) describing rooms in which people are reasonably expected to disrobe.

of disrobing rooms in subsection (a)(5)(ii) cannot be applied to a set of circumstances in the absence of the definition in (a)(5)(i).

Finally, we find support for our interpretation of the interplay of subsections (a)(5)(i) and (ii) in another pair of subsections under § 3-902 in which the General Assembly used similar language. Subsection (a)(6)(i) says "'[v]isual surveillance' *means* the deliberate, surreptitious observation of an individual by any means." § 3-902(a)(6)(i) (Emphasis added). The subsection following it -- (a)(6)(ii) -- provides, "'visual surveillance' *includes* surveillance by: (1) direct sight; (2) the use of mirrors; (3) or the use of cameras." § 3-902(a)(6)(ii) (Emphasis added). Clearly, subsection (a)(6)(ii) merely provides a method of "surveillance," not an alternative category of surveillance. If a person "observes" another individual by the "use of mirrors," *see* § 3-902(a)(6)(ii), the observation must still be "deliberate" and "surreptitious" pursuant § 3-902(a)(6)(i) to constitute a "visual surveillance" under the statute. We conclude that the subsections at issue in this case interact in a similar way. Subsection (a)(5)(ii) includes particular types of rooms that are illustrative of rooms in which one could reasonably be expected to disrobe . . . with a reasonable expectation of privacy.

We therefore disagree with both parties that this case turns on whether the term "restroom" can include a bathroom in a private home; instead, the critical question is whether the room where the surveillance occurred was located within "a room in which a person can reasonably be expected to . . . disrobe and has a reasonable expectation of privacy" in one of the nine categories of places enumerated in (a)(5)(i). The definition in

§ 3-902(a)(5)(i), therefore, contains all of the essential elements of a "private place" and subsection (a)(5)(ii) merely supplements that subsection, rather than serving as an "independent, alternative" definition of a "private place." *See Tribbit*, 403 Md. at 653.

We hold, therefore, that subsection (a)(5)(ii) is not one of two alternative definitions of "private place" as suggested by both parties; it is part of the same definition provided in (a)(5)(i). Accordingly, to put forth sufficient evidence that Bickford violated § 3-902(c)(1), the State needed to show that Bickford conducted visual surveillance of his daughter, with prurient intent, in a room in which a person can reasonably be expected to disrobe "in" one of the nine "place[s] of public use or accommodation" enumerated in subsection (a)(5)(i).

The State suggests that this interpretation of § 3-902(a)(5) "would mean that the statute protect[s] individuals from being recorded while using public facilities but not individuals in a bathroom within their own private residence where one would normally expect to have the highest level of privacy." The State overlooks subsection (c)(2) of § 3-902, which is focused exclusively on surveillance of an individual's "private area" by the use of a camera. The General Assembly did not limit § 3-902(c)(2) by the location of the surveillance. Furthermore, whether or not the circumstances of this case would apply, § 3-903(c) provides an express prohibition against "plac[ing] . . . a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence." Thus, other provisions within the same statutory scheme do protect individuals, under certain circumstances, from being recorded "in a bathroom within [his or her] own private residence" or from having his or her "private

area" surreptitiously observed without his or her consent, regardless of the location. Given our examination of the statutory framework, we think it would be illogical to hold that sufficient evidence supported a finding that the surveillance occurred in a "private place" as defined under § 3-902(c). Had the jury been instructed to consider whether Bickford violated § 3-902(c)(2), our analysis may have led to a different conclusion with respect to the counts charging Bickford with violating § 3-902.

Although the apparent intent of the legislature was to protect against "evils" similar in nature to the conduct alleged below, we are limited to interpreting the language of the statute in a way that is logical in light of the entire statutory scheme. This is so particularly where a different section of the statute deals directly with the use of a camera to record the "private areas" of another person's body, and another statute prohibits the use of a camera for the surreptitious surveillance within private residences. Given our task of statutory interpretation and the nature of this case, we recognize that "[r]estraint is warranted when the conduct under investigation is particularly opprobrious and it is tempting to discredit any argument potentially offering protection to the wrongdoer." *Walker v. State*, 432 Md. 587, 628 (2013) (McDonald, J. concurring). However, we cannot expand the statute beyond its limits, nor can we reassign ostensibly more applicable charges after the fact. The interpretation the State advances, however, is not logical in light of the structure of the section at issue and its position within the larger statutory scheme.

Although Bickford avers in his brief that "[t]he evidence was insufficient as a matter of law on any and all counts that depended upon video surveillance in the bathroom," he

fails to provide any meritorious reason why the evidence was insufficient to support his conviction for sexual abuse of a minor. *See* CL § 3-602(b)(1). As we explained in *Schmitt*, to show exploitation under § 3-602, "[t]he State need only prove, beyond a reasonable doubt, that the parent or person having temporary or permanent custody of a child took advantage of or unjustly or improperly used the child for his or her own benefit." 210 Md. App. at 499 (quoting *Brackins v. State*, 84 Md. App. 157, 162 (1990)). A jury could reasonably conclude that Bickford recorded his daughter getting in and out of the shower for his own sexual gratification, particularly in light of the other evidence suggesting that Bickford was sexually aroused by his daughter, sought out pornographic materials depicting father-daughter sex, and requested that she perform oral sex on him, in addition to C.B.'s testimony that Bickford expressly stated his interest seeing her naked when she confronted him about the camera. Accordingly, even if the issue were properly before us, we would conclude that the evidence was more than sufficient to support the jury's finding that Bickford sexually exploited his daughter.

Our decision that the evidence was insufficient to uphold Bickford's conviction under § 3-902(c)(1) has no impact on the sufficiency of the evidence to support Bickford's conviction for the sexual abuse of a minor. Sexual abuse of a minor "is broader than . . . 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." *Id.* at 497. Given Bickford's sentence -- twenty-five years' incarceration with all but fifteen years suspended, plus five years' probation upon release

-- was based on his conviction of sexual abuse of a minor, and the court merged the remaining convictions for visual surveillance with prurient intent at sentencing, our holding does not require that we remand for resentencing. We therefore affirm the jury's guilty verdict on the charge for sexual abuse of a minor and vacate Bickford's convictions for visual surveillance with prurient intent.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY ON THE COUNTS OF PRIVATE PLACE -- PRURIENT INTENT VACATED; JUDGMENT OF CONVICTION FOR SEXUAL ABUSE OF A MINOR AFFIRMED. EACH PARTY TO BEAR ITS OWN COSTS.