Circuit Court for Wicomico County
Case No. 22-K-16-000802

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 264

September Term, 2018

LEAH CORINN WRIGHT

v.

STATE OF MARYLAND

Arthur,
Leahy,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: August 21, 2019

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

After a two-day trial, a jury sitting in the Circuit Court for Wicomico County found appellant Leah Wright guilty of sexual abuse of a minor, a third-degree sexual offense, and assault in the second degree. The court sentenced Wright to 25 years of imprisonment, with all but 18 months suspended, for sexual abuse of a minor; 10 years, all suspended, for the third-degree sexual offense; and five years of probation. She is required to register as a Tier III Sex Offender.

Wright presents the following question for our review: "Was the evidence sufficient to support Appellant's convictions?"

For the reasons discussed below, we shall conclude that there was sufficient evidence and thus shall affirm.

BACKGROUND

Leah Wright began to attend a martial arts studio in Salisbury in 2005, when she was about 10 years old. By 2014, when she was 18, she was an assistant instructor and a hostess at the birthday parties that sometimes took place at the studio.

Zach Bennett, an instructor and senior camp counselor at the studio, was about five years older than Wright. Wright testified that Bennett began making sexual advances to her before she was 15. By the time she was 17, Wright was involved in a covert sexual relationship with him.

Wright and Bennett exchanged text-messages in which they discussed their sexual activity and their sexual fantasies, including their desire to have a "threesome." Wright unsuccessfully solicited a young woman to participate. She then suggested her younger

friend C.[1] as a possibility.

C. was a 14-year-old student and assistant instructor at the studio. C. regarded Wright, who was five years older than she, as her best friend.

Bennett, who was 23 or 24 years old at the time, was not initially interested in C., but Wright persisted and said that she would set something up. Bennett then began sending flirtatious text-messages to C. As the messages (and the accompanying photographs) became more explicit, C. felt confused. She approached Wright, who told her to "play along" and asked, "what's the harm?" Wright did not tell C. that she was in a sexual relationship with Bennett. C. rejected Bennett's advances until later, when she learned that Wright and Bennett were involved sexually.

Wright suggested that C. volunteer at a birthday party so that she could meet Bennett in the D.J.'s booth and engage in fellatio. Wright instructed C. on what to tell people at the studio about why she was staying after the party and what to tell her parents. At Wright's suggestion, C. told people at the studio that she was volunteering because she had nothing else to do, but she told her parents that she was getting paid so that they would let her stay. C. testified that she could not have come up with those excuses on her own.

Wright coached C. before the sexual encounter with Bennett. Wright explained to C. that Bennett would be sitting in a chair with his pants down and that C. should begin engaging in fellatio. Although C. was extremely nervous, Wright (in C.'s words)

[1] Because of the sensitive nature of this case, we refer to C., the victim of sexual abuse, by her initial.

"pushed" her to go to Bennett and assured her that after she started she would be less nervous. C. agreed to enter the D.J. booth because she trusted Wright and Bennett.

Shortly after C. entered the booth and began to perform fellatio on Bennett, Wright entered and began engaging in fellatio as well. Afterwards, C. and Wright discussed the encounter and considered whether C. would participate again.

C., Wright, and Bennett had two more sexual encounters. The second was similar to the first. The third occurred in the employee restroom: C. entered the bathroom to have sex with Bennett while Wright stood as a lookout in an office adjacent to the bathroom.

Wright was indicted on 23 counts of sexual abuse of a minor, sexual offense in the third degree, sexual solicitation of a minor, conspiracy to commit a sex offense, and assault in the second degree. She was ultimately convicted on three counts: sexual abuse of a minor, sexual offense in the third degree, and assault in the second degree. All of the counts for which she was convicted grew out of the first encounter.

She noted a timely appeal.

DISCUSSION

In assessing the sufficiency of the evidence supporting a criminal conviction, we ask "'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.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of

conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Id.* (alteration in original) (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)). This Court will "defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, [or] refused to draw inferences, or whether we would have drawn different inferences from the evidence." *State v. Mayers*, 417 Md. 449, 466 (2010).

Viewing the evidence in a light most favorable to the State, we conclude that the jury could reasonably have found the evidence sufficient to prove that Wright was guilty as an accomplice on each of the charges of which she was convicted.

I. Third-Degree Sexual Offense

Md. Code (2002, 2012 Repl. Vol.), § 3-307 of the Criminal Law Article ("CL") sets forth the elements of a third-degree sexual offense. Among other things, CL § 3-307(a)(3) states that a person may not "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."

Wright argues, at length, that the evidence was insufficient to convict her, as a principal, of committing a third-degree sexual offense under § 3-307(a)(3), because C. was not under the age of 14, because Wright was less than four years older than C., and because Wright did not have sexual contact with C. Wright also argues that the evidence was insufficient to convict her of committing a third-degree sexual offense as Zach Bennett's accomplice.

Wright's first argument misses the mark, because the State did not proceed against her under the theory that she was guilty, as a principal, of committing a third-degree sexual offense: the State's theory was that Bennett committed a third-degree sexual offense and that Wright acted as Bennett's accomplice. Wright herself acknowledges that "[a] defendant may be guilty of a sex offense in the third degree as an accomplice, 'even though the defendant did not personally commit the acts that constitute that crime.'" Brief at 12 (quoting Maryland Criminal Pattern Jury Instruction 6:00).

Wright has not preserved her second argument, that the evidence was insufficient to convict her as an accomplice in a third-degree sexual offense committed by Bennett. In the motion for judgment of acquittal, Wright's defense counsel did not challenge the sufficiency of the evidence to convict her as an accomplice in a third-degree sexual offense committed by Bennett. Instead, her counsel argued that the General Assembly did not intend to punish accomplices to third-degree sexual offenses.

The review of a claim of insufficiency "'is available only for the reasons given by [the defendant] in his [or her] motion for judgment of acquittal.'" *Peters v. State*, 224 Md. App. 306, 353 (2015) (quoting *Whiting v. State*, 160 Md. App. 285, 308 (2004)) (first alteration in original); *see* Md. Rule 4-324(a) (in moving for judgment of acquittal, "[t]he defendant shall state with particularity all reasons why the motion should be granted"). Therefore Wright "'is not entitled to appellate review of reasons stated for the first time on appeal.'" *Peters v. State*, 224 Md. App. at 353 (quoting *Starr v. State*, 405 Md. 293, 302 (2008)).

But even if Wright had preserved a challenge to the sufficiency of the evidence to

convict her as an accomplice to a third-degree sexual offense committed by Bennett, she would not prevail.

There was abundant evidence that Bennett himself committed a third-degree sexual offense in violation of CL § 3-307(a)(4), which prohibits a person from engaging "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." Bennett was 23, C. was only 14, and the term "sexual act" includes fellatio. *See* CL § 3-301(d)(1)(iii). Hence, the only question is whether the jury could reasonably have found that Wright "aided, counseled, . . . or encouraged" Bennett in the commission of a third-degree sexual offense and hence that she was guilty as an accomplice. *See State v. Sowell*, 353 Md. 713, 718 (1999).

The evidence shows that Wright sought out another young woman to join her and Bennett in their sexual encounters; that Wright suggested to Bennett that they approach C. and that Wright overcame Bennett's initial lack of interest in C.; that Wright encouraged C. to "play along" with Bennett's advances; that Wright instructed C. to lie to her parents and others so that she could stay at the studio and have a sexual encounter with Bennett; that Wright made the arrangements for C. to have sexual contact with Bennett; that Wright coached C. on what to do in the encounter with Bennett; that Wright "pushed" C. to engage in the sexual encounter with Bennett even though C. was extremely nervous; that C. went into the room with Bennett in part because she trusted Wright; and that Wright joined C. and Bennett. This evidence was more than sufficient to support a conclusion that Wright aided and abetted Bennett's commission of a third-degree sexual offense involving C.

II. Sexual abuse of a minor

Under CL § 3-602(a)(1)(4), "sexual abuse" of a minor is defined as "an act that involves sexual molestation or exploitation of a minor," including a "sexual offense in any degree." Section 3-602(b)(1) makes it a crime for a "person who has . . . temporary care or custody or responsibility for the supervision of a minor" to sexually abuse the minor. As Wright acknowledges, the term "temporary . . . responsibility for the supervision of a minor" is broad enough to include situations in which the person is entrusted with authority to oversee and direct the conduct of the minor. *See, e.g.*, *Anderson v. State*, 372 Md. 285, 290-97 (2002) (teacher who drove child home from school); *Ellis v. State*, 195 Md. App. 522, 548-50 (2009) (teacher present at school after school hours with child who was not a student in teacher's class and not a participant in extra-curricular activities); *Tapscott v. State*, 106 Md. App. 109, 141-42 (1995) (half uncle who agreed to drive child various places), *aff'd*, 343 Md. 650 (1996); *Newman v. State*, 65 Md. App. 85, 98-99 (1985) (defendant who resided in house where child babysat younger children for defendant's girlfriend and who transported child to and from babysitting job).

On the charge of sexual abuse of a minor, the State proceeded on two theories: first, that Wright had "temporary care or custody or responsibility for the supervision of" C.; and, second, that Bennett, the senior instructor, had "temporary care or custody or responsibility for the supervision of" C. and that Wright aided and abetted Bennett in sexually abusing C.

Wright argues that the evidence was insufficient to support her conviction for

sexual abuse of a minor, because, she says, there was insufficient evidence to establish that she herself had any supervisory authority over C. Assuming solely for the sake of argument that Wright is correct, the evidence was still sufficient to support a conviction on the State's alternative theory of aiding and abetting. *See supra* § I. In this regard, we note that Wright did not argue at trial (and thus cannot argue on appeal) that the evidence was insufficient to support the conclusion that she aided and abetted Bennett in sexually abusing C.

Nor does Wright argue that the evidence was insufficient to show that Bennett committed sexual abuse of a minor. Instead, Wright acknowledges that the evidence showed that "Bennett was [C.'s] supervisor" at the time of the offense (Brief at 16), and Wright concedes that C. was "a victim of sexual abuse at the hands of Mr. Bennett[.]" *Id.* at 17. The evidence was, therefore, sufficient for the jury to convict Wright of aiding and abetting Bennett sexually abusing C.

III. Second-degree assault

Second-degree assault is a statutory crime that encompasses the common-law crimes of assault, battery, and assault and battery. *See* CL § 3-203(a); CL § 3-201(b) (defining "assault" to mean "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings"). A battery is a touching that is either harmful, unlawful, or offensive. *Quansah v. State*, 207 Md. App. 636, 647 (2012). "A third degree sexual offense" under CL § 3-307 "requires an unlawful touching." *Biggus v. State*, 323 Md. 339, 351 (1991) (citing prior version of third-degree sexual offense statute). Thus, "the unlawful sexual contact required for a violation" of CL § 3-307

"constitutes a battery." *Id.*

Wright argues that evidence did not support a conviction for second-degree assault, because there was no evidence of physical contact between herself and C. and (in Wright's view) insufficient evidence that she aided and abetted Bennett in his second-degree assault of C. Wright's first argument is beside the point, because the State did not proceed on the theory that Wright herself had committed a second-degree assault. Wright's second argument is unpreserved, because at trial her defense counsel did not argue there was insufficient evidence of her accomplice liability for second-degree assault.

Even if Wright had preserved her challenge to the sufficiency of the evidence on a theory of accomplice liability, it would be without merit. We have already concluded the evidence was sufficient to establish that Wright aided, counseled, or encouraged Bennett in the commission of a third-degree sexual offense against C. *See supra* § I. That same evidence supports the conclusion that Wright aided, counseled, or encouraged Bennett in the commission of a harmful, unlawful, or offensive touching – i.e., in the battery form of second-degree assault.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.