Circuit Court for Montgomery County
Case No.: C-15-CR-22-001317

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 352

September Term, 2024

JOSE VLADIMIR MARTINEZ

v.

STATE OF MARYLAND

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Following a bench trial in the Circuit Court for Montgomery County, Jose Vladimir Martinez, appellant, was convicted of sexual abuse of a minor and second-degree sexual offense. The court later sentenced him to ten years' incarceration, five suspended, followed by five years of supervised probation.

On appeal, Martinez contends that the evidence was insufficient to support his convictions. In reviewing this issue, we must "determine whether . . . *any* rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt." *Williams v. State*, 251 Md. App. 523, 569 (2021) (cleaned up). Put differently, "the limited question before us is not whether the evidence should have or probably would have persuaded [most] fact finders but only whether it possibly could have persuaded any rational fact finder." *Smith v. State*, 232 Md. App. 583, 594 (2017) (cleaned up). We conduct our review keeping in mind our role of reviewing both the evidence and all reasonable inferences deducible from it in a light most favorable to the State. *Smith v. State*, 415 Md. 174, 185–86 (2010); *Williams*, 251 Md. App. at 569.

To convict Martinez of sexual abuse of a minor under the State's theory of the case, the State had to prove: (1) that he was a family member of the victim; (2) that the victim was a minor; and (3) that Martinez caused sexual abuse to the victim. Md. Code Ann., Crim. Law ("CL") § 3-602(b)(2). In this context, a "family member" is "a relative of a minor by blood, adoption, or marriage." CL § 3-601(a)(3). "Sexual abuse" includes incest,

rape, sexual offense in any degree, and any other sexual conduct that is a crime.[1] CL § 3-602(a)(4)(ii).

To convict Martinez of second-degree sexual offense under the State's theory of the case, the State had to prove: (1) that he engaged in a sexual act; (2) that the victim was under the age of 14 years old; and (3) that Martinez was at least 4 years older than the victim. CL § 3-306(a)(3).[2] "Sexual act" includes analingus, cunnilingus, fellatio, anal intercourse, or "an act in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party." CL § 3-301(d)(1).

The evidence at trial showed that Martinez was the victim's cousin, that the victim was under 14 years old at the time of the alleged conduct, and that Martinez was more than four years older than the victim. The victim testified that Martinez "call[ed] [her] over" to his bedroom, "ask[ed] [her] to lower the bottom part of [her] clothes[,]" and she removed her underwear and pants and then laid face up on Martiniz's bed. The victim then testified

[1] The acts alleged in this case occurred between 2004 and 2005. At that time, rather than "any other sexual conduct that is a crime," CL § 3-602(a)(4)(ii) defined "sexual abuse" to include sodomy and "unnatural or perverted sexual practices." 2003 Md. Laws Ch. 167 (H.B. 588). The statute was amended in 2020 to remove sodomy. 2020 Md. Laws Ch. 45 (H.B. 81). Three years later, the statute was amended again to replace "unnatural or perverted sexual practices" with "any other sexual conduct that is a crime." 2023 Md. Laws Ch. 796 (H.B. 131). These amendments do not affect the outcome of this appeal.

[2] Although in effect at the time the acts alleged in this case occurred, CL § 3-306(a)(3) was repealed in 2017. 2017 Md. Laws Ch. 161. Martinez does not contend that this affects his appeal.

that although she does not "remember much," she remembers Martinez "touching [her] with his fingers" in her vagina. The victim's sister testified that she witnessed the sexual act. She stated that she saw Martinez "kneeling down" and "literally spreading [the victim's] vulva's lips and licking [the victim's] vulva" while the victim was laying on the bed. This evidence, "if believed and if given maximum weight, would have established the necessary elements of the crime[s]." *McCoy v. State*, 118 Md. App. 535, 538 (1997) (emphasis omitted). *See also Reeves v. State*, 192 Md. App. 277, 306 (2010) ("[T]he testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction.").

Notably, in his brief, Martinez does not identify a single element that the State failed to prove. To be sure, as Martinez points out, there were arguably inconsistencies and gaps in the victim's testimony. But "credibility goes to the weight of the evidence, not its sufficiency." *Owens v. State*, 170 Md. App. 35, 103 (2006), *aff'd*, 399 Md. 388 (2007). "[T]he assessment of testimonial credibility . . . is not and never was the function of appellate review, as a matter of law." *Rothe v. State*, 242 Md. App. 272, 283 (2019). Thus, the evidence, when viewed in the light most favorable to the State, was sufficient to sustain Martinez's convictions.

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