Circuit Court for Calvert County
Case No. C-04-CR-20-000235

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 894

September Term, 2021

BRIAN CULLEN SHERIDAN

v.

STATE OF MARYLAND

Graeff,
Shaw,
Raker, J.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 29, 2022

This appeal arises from the trial court's denial of appellant's motion to suppress statements he made to the police captured on the police body camera recording. Appellant presents the following questions for our review:

1. Did the trial court err by denying the motion to suppress appellant's statements made while in custody?

2. Did the trial court err by allowing the prosecutor to play a recording from a body-worn camera containing hearsay and prejudicial statements made by Deputy Parks?

3. Did the trial court err or abuse its discretion by failing to give a complete jury instruction regarding appellant's statements?

4. Is the evidence legally sufficient to sustain appellant's convictions in counts 1-3?

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Calvert County of sexual abuse of a minor child, sexual offense in the third degree of a minor child, sexual contact of a minor child, and assault of a minor child. He proceeded to trial before a jury, and the jury returned guilty verdicts on all counts. The court imposed a term of incarceration of twenty years for sexual abuse of a minor and ten years for a third-degree sex offense, to be served concurrently. For sentencing purposes, the court merged sexual abuse in the fourth degree and assault in the second degree.

Calvert County Sheriff Deputy Parks responded to a call from a home in Lusby, Maryland, where he received appellant's name and description. Deputy Parks left to search for appellant and subsequently located appellant on the roadside. Deputy Parks activated his body-worn camera. In the video recording, appellant acknowledged his name, said that he was coming from a friend's house in Drum Point, and stated that "nothing happened" at Jennifer Greenlee's house. Deputy Parks did not search, pat down, or handcuff appellant during the interaction. Deputy Wilder arrived, and after confirming appellant's name, arrested him.

Defense counsel filed a pre-trial motion to suppress statements captured on the police body camera recording between appellant and Deputy Parks during appellant's roadside encounter with the two law enforcement officers. Defense counsel argued that appellant was in custody when the police questioned him, and therefore the officers should have advised appellant of his *Miranda* rights. Defense counsel emphasized the following circumstances to support his argument that appellant was in custody: (1) appellant was approached by a law enforcement officer while walking alone at night; (2) a second law enforcement officer arrived and stood in front of appellant; (3) appellant was questioned as the sole suspect in an alleged offense and not as a witness; (4) Deputy Parks was aggressive in challenging appellant's version of the events; (5) Deputy Parks testified that appellant was not free to leave, and (6) the encounter ended with appellant's

arrest. The State argued that appellant was not in custody and that he was detained pursuant to a *Terry* stop. *Terry* stops do not require *Miranda* warnings.[1]

The motions court agreed with the State, ruling that the stop was investigatory in nature, a non-custodial *Terry* stop, and that the purpose and character of the questioning was investigatory "to assess what was going on." The court noted that the officer's language like "cut the crap" did not change the nature of the stop. The court ruled that the officer's questions were part of an "ongoing investigation."

The motions court found that appellant's statements up until the time appellant said he "was done answering questions" were made to law enforcement during an investigatory *Terry* stop and appellant was not in custody for *Miranda* purposes. The court made factual findings that the interaction between appellant and the officers lasted several minutes, the officer's questions were investigatory in nature, and appellant was smoking and using his cell phone during the encounter. The court ruled that the first three minutes and twenty-six seconds of the recording were admissible; the remaining portion was suppressed.

The statements at issue in this appeal occurred within the first three minutes and twenty-six seconds of the recording.

[1] The United States Supreme Court held in *Berkemer v. McCarty*, 468 U.S. 420, 449 (1984) that based upon the non-threatening character of *Terry* stops, such investigatory stops are not subject to *Miranda* requirements.

In October 2020, appellant Brian Sheridan was staying with a former co-worker, Jennifer Greenlee, at her residence in the Ranch Club neighborhood in Lusby, Maryland. Appellant met Ms. Greenlee two to three years prior to the events of this case. Appellant was not living with her, but for about two weeks he would "come over when [she was] home so he would have somewhere to eat, if he needed to shower. If [she] left for work, then he would leave." Ms. Greenlee's 17-year-old son, X.J., 7-year-old daughter, B.L., and 17-year-old nephew, N.J., lived with her at this time.

On October 12, 2020, appellant was at Ms. Greenlee's house with Ms. Greenlee, B.L., X.J., and N.J. Ms. Greenlee testified that she and N.J. had to leave the house at 3:30 PM to go to work and that appellant was supposed to leave as well, but she allowed him to stay because X.J. asked if appellant could remain in the house and hang out with him. After Ms. Greenlee and N.J. left, X.J.'s friend came over to the house. When it came time for X.J.'s friend to leave, X.J. drove him home. Prior to X.J.'s departure, X.J. called his mother for permission to take his friend home. Ms. Greenlee said yes and to "make sure you take your sister." X.J. then asked appellant "if it was okay if [B.L.] stayed here" while he drove his friend home, to which appellant replied "yes." X.J. further asked if appellant would be willing to help B.L. with her schoolwork and appellant responded that "that was fine." Ms. Greenlee testified at trial that appellant had never previously taken care of B.L. or been alone with her.

While at work, Ms. Greenlee received a video phone call from B.L. Ms. Greenlee testified that B.L. looked scared, was crying, and told her that "Brian was treating her like his girlfriend" and was "rubbing her between her legs." Ms. Greenlee then called her neighbor friend, Rose Jones, and asked her to go to her house to pick up B.L. until she got home. X.J. picked up Ms. Greenlee from work and her boss, Charles Carter, followed her home. When Ms. Greenlee arrived back in her neighborhood, she first went to Ms. Jones' home and checked in on B.L., then went to her house with X.J. and Mr. Carter and confronted appellant about what happened. Ms. Jones called the police. Appellant told Ms. Greenlee that he "felt somebody caressing [him] so [he] started doing the same and then [he] woke up and didn't know where [he] was at." Mr. Carter and Ms. Greenlee testified at trial that they instructed appellant to leave the house and he left.

Deputy Parks, wearing the body camera, and Deputy Wilder responded to Ms. Jones' call and arrived at Ms. Greenlee's home. Ms. Greenlee testified that the police spoke to her and B.L. Deputy Parks testified that when he arrived at the scene, he and Deputy Wilder were "told the reason why [they] were there" and were told the name of appellant as a suspect. Deputy Parks located appellant walking by Rousby Hall Road.

The State played the video footage for the jury from Deputy Parks' body camera depicting the initial interaction of Deputy Parks with appellant. The statements made by Deputy Parks and appellant from the body camera footage, in relevant part, are quoted below:

[APPELLANT]: Hey, how's it going?

[TROOPER]: Good. What's your name?

[APPELLANT]: Brian.

[TROOPER]: Sheridan?

[APPELLANT]: That's correct.

[TROOPER]: Okay, where are you coming from, Brian?

[APPELLANT]: My friend's house in Drum Point.

[TROOPER]: Your friend's house in Drum Point?

[APPELLANT]: Yes, sir.

[TROOPER]: Do you know your friend's name?

[APPELLANT]: I do.

[TROOPER]: All right, what's her name?

[APPELLANT]: I—

[TROOPER]: I'm sorry, (inaudible)?

[APPELLANT]: I really don't want to involve my friends in this.

[TROOPER]: Okay. Well what are you trying to involve your friends in?

[APPELLANT]: Nothing. What are you trying to involve them in?

[TROOPER]: Nothing, we're just investigating a crime and your name came up, so that's the reason why I'm out here talking to you.

[APPELLANT]: Okay.

[TROOPER]: That's all, all right. So where are you coming from tonight before your friend's house in Drum Point?

[APPELLANT]: Work.

[TROOPER]: Okay. Was your friend in Drum Point or was your friend in the Ranch Club?

[APPELLANT]: My friend's in Drum Point.

[TROOPER]: Okay, you weren't staying at a friend's house in the Ranch Club?

[APPELLANT]: No.

[TROOPER]: Okay, and you weren't staying on her

couch?

.....

[TROOPER]: What happened at your friend Jennifer's house tonight, Jennifer Greenlee?

[APPELLANT]: Nothing happened.

[TROOPER]: Nothing happened?

[APPELLANT]: No.

[TROOPER]: Okay, so there was no altercation or anything like that?

[APPELLANT]: No

[TROOPER]: Okay, so you didn't leave for any reason, she didn't tell you to leave or anything like that?

[APPELLANT]: I don't know what you're talking about.

[TROOPER]: *Okay, I just came from there, so you can stop the bullshit, okay. Just, just, I'd rather you be straight up honest with me, okay, because I don't have time for, for crap, okay. So I'm going to ask you again, why are you coming from Jennifer's house, what happened, okay, because I know where you came from.*

[APPELLANT]: Nothing, nothing happened.

[TROOPER]: Huh?

[APPELLANT]: Nothing happened.

[TROOPER]: Okay, just so you know, everything we do is audio and video recorded on my body camera, okay.

[APPELLANT]: Okay.

[TROOPER]: So you're not coming from, so you're not coming from Jennifer Lee's house?

[APPELLANT]: No sir.

[TROOPER]: Okay. So you're, so, so you weren't staying there earlier or nothing like that?

[APPELLANT]: I'm done answering questions.

Deputy Parks testified at the suppression hearing and at trial that appellant was not handcuffed, searched, or patted down during the encounter and the entire interaction was a little more than three minutes. Deputy Wilder arrived and arrested appellant.

The judge discussed jury instructions with counsel. Appellant requested that the jury instruction concerning confessions include the language "whether or not Defendant was advised of his [*Miranda*] rights" as part of the jury determination whether the statement to the police was voluntary. The trial court declined the request, ruling that *Miranda* was inapplicable because the detention was not custodial.

The jury convicted appellant and the court imposed sentence. Appellant noted this timely appeal.

II.

Before this Court, appellant argues that the motions court erred in failing to suppress his statement because he was in custody when he was questioned by Deputy Parks and was never advised of his *Miranda* warnings prior to making those statements. This error, appellant claims, was not harmless.

Appellant argues that the trial court erred in allowing the State to play the body-camera recording to the jury, particularly Deputy Parks' statements in which he expressed disbelief of appellant's statements of where he was that night. Appellant contends that these statements by Deputy Parks were hearsay, irrelevant, and unfairly

prejudicial, and that allowing the jury to hear Deputy Parks' statements of disbelief of appellant's account could have influenced the jury verdict.

Appellant argues that the trial court abused its discretion by failing to properly instruct the jury as to the voluntariness of his statements to the police. He contends that the court conflated the pre-trial suppression motion ruling that appellant was not in police custody for the purpose of triggering the need for *Miranda* warnings and the determination to be made by the jury about whether a defendant's statements to police officers were voluntary. When the court instructed the jury as to how to evaluate the voluntariness of appellant's statements to the police, the court declined to include the advisement of *Miranda* rights as a factor the jury should consider. Appellant argues that consideration of whether *Miranda* rights had been given to appellant is a factor the jury should have considered in determining voluntariness.

Finally, appellant argues that the evidence was insufficient to sustain his conviction for sexual abuse of a minor. He argues that the State failed to establish each of the necessary elements for the crime of sexual abuse of a minor and that the State did not present sufficient evidence to establish that appellant engaged in sexual contact with B.L. In particular, appellant argues that the State failed to establish that he was a person who had "permanent or temporary care or custody or responsibility for the supervision of B.L." In addition, appellant argues that the State failed to establish that he engaged in

"sexual contact" as defined by Md. Code Ann., Crim. Law § 3-301(e)(1),[2] "an intentional touching of the victim or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." As to the third count, sexual offense in the fourth-degree, appellant highlights § 3-307(b)(1), which prohibits engaging in "sexual contact with another without the consent of another."

The State argues that the motions court properly denied appellant's motion to suppress his statements because he was not in custody for *Miranda* purposes. The State emphasizes that *Miranda* requirements apply only to custodial interrogations and the appellant was not in custody when he was questioned by Deputy Parks. The State points to the factors that the court found supporting that appellant was not in custody: that the encounter occurred on a public road, involved only two officers, where the second officer played "a secondary role, at best," that the interaction was brief, that there were no weapons drawn, that appellant was never handcuffed, and that appellant was smoking a cigarette and using his phone during the interaction. The State disputes appellant's claim that he was "questioned as the sole suspect" and emphasizes that appellant was questioned "to determine if he was the same person who Ms. Greenlee accused of assaulting her daughter and to get his side of the story."

[2] Unless otherwise noted, all subsequent statutory references herein are to Md. Code Ann., Crim. Law.

The State maintains that the trial court properly admitted Deputy Parks' statement challenging appellant's statements that nothing happened at the victim's mother's house, including the officer's expression of disbelief of appellant. The State asserts that the statements were not hearsay because they were not admitted for their truth, that the statements were relevant because they provided context for the statements appellant made in response to Deputy Parks' questions, and that they were not unfairly prejudicial because the probative value of the contested statement outweighed its potential for unfair prejudice. The State contends that even if the trial court erred or abused its discretion in admitting Deputy Parks' statement, the error was harmless because appellant's defense denying that anything happened occurred before Deputy Parks' expression of disbelief and would remain the same whether Deputy Parks' statement was admitted or not.

As to the jury instructions issue, the State argues that the trial court properly exercised its discretion in excluding references to *Miranda* because, when the interrogation is non-custodial, whether the defendant was advised of his rights is inapplicable. The State argues that appellant failed to establish the threshold requirement for entitlement of *Miranda* advisements---that he was in custody at the time he made his statements to Deputy Parks.

Finally, the State argues that the evidence was sufficient to support appellant's convictions for sexual abuse. As to sexual abuse of a minor, the State references § 3-602, which proscribes the sexual abuse of a minor by a "parent or other person who has

permanent or temporary care or custody or responsibility for the supervision" of the child. The State points out that appellant agreed to be responsible for B.L.'s supervision by agreeing that B.L. could stay home with him and by agreeing to help her with her schoolwork. As to third degree and fourth degree sexual offense, the State argues that there was sufficient evidence that appellant touched B.L.'s genital area for sexual arousal or gratification or for the abuse of B.L. as proscribed by § 3-307 and § 3-308, respectively. The State rebuts appellant's argument that B.L.'s statement that he "touched between her legs" was too ambiguous because it failed to specify whether he touched her genital, anal, or other intimate area, and that B.L.'s statement that he was "treating her like his girlfriend" could be interpreted in different ways. The State contends there was sufficient evidentiary basis under these circumstances for a jury to conclude that appellant had rubbed B.L.'s genital area and acted for sexual arousal or gratification or to abuse B.L.

III.

In reviewing the lower court's denial of a motion to suppress, we consider only the record at the suppression hearing. *See Partee v. State*, 121 Md. App. 237, 243-44 (1998). We make an independent, constitutional judgment based on the facts presented at the suppression hearing. *See Lancaster v. State*, 86 Md. App. 74, 95 (1991). We give great weight to the motion judge's first level finding of facts and make our own independent

judgment in applying those facts. *See Id*. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. *See Rush v. State*, 403 Md. 68, 83 (2008). We accept the suppression court's factual findings and conclusions regarding the credibility of testimony unless they are clearly erroneous. *See Id*. at 83. We review *de novo* appellant's challenge to the lower court's determination that he was not in custody at the time of his interaction with Deputy Parks. *See Gupta v. State*, 452 Md. 103, 129 (2017).

Appellant challenges the lower court's denial of his motion to suppress the statements he made to Deputy Parks, contending they should not have been admitted as they were said during a custodial interrogation where he never received *Miranda* advisement. Because of the inherently coercive nature of custodial interrogations, *Miranda* warning requirements apply only when "there has been such a restriction on a person's freedom as to render him 'in custody.'" *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011) (quoting *Stansbury v. California*, 511 U.S. 318, 322 (1994)). It is the defendant's burden to demonstrate the applicability of *Miranda* requirements. *See Smith v. State*, 186 Md. App. 498, 520 (2009). If the individual is not in custody at the time he or she was questioned, the absence of *Miranda* warnings is immaterial and "presents no impediment to the admission of his inculpatory statements." *Owens v. State*, 399 Md. 388, 427 (2007).

Appellant maintains that the portion of the recorded interview admitted into evidence was prejudicial because the prosecutor used those statements to discredit appellant and to show that appellant gave two different accounts of the events, accounts that could not be reconciled.

Custody is an objective determination based on the totality of the circumstances. *Id.* at 428. The Court of Appeals, in *Whitfield v. State*, 287 Md. 124, 141 (1980), identified factors a court should consider in assessing whether custody existed, *i.e.*, whether a reasonable person would feel he was not free to leave and break off police questioning. In making this factual evaluation, the Court identified the following factors:

> "[W]hen and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning -- whether he came completely on his own, in response to a police request, or escorted by police officers. Finally, what happened after the interrogation -- whether the defendant left freely, was detained or arrested -- may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning."

Id. at 141 (1980) (quoting *Hunter v. State*, 590 P.2d 888, 895 (Alaska 1979)).

A law enforcement officer making an investigative stop may ask a moderate number of questions to determine the identity of the suspect and to confirm or dispel the

officer's suspicions without rendering the subject "in custody" for the purposes of Miranda. *See Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984); *Terry v. Ohio*, 392 U.S. 1, 22 (1968). A *Terry* stop constitutes a seizure under constitutional analysis but is "substantially less 'police dominated'" than police interrogations contemplated by *Miranda*. *Berkemer*, 468 U.S. at 439. *Terry* stops are not subject to *Miranda* requirements to advise individuals of their rights while in police custody. *Id.* at 440. "[An] officer may ask the detainee a moderate number of questions to determine his [or her] identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond." *Id.* at 439.

We agree with the State that appellant was not in custody at the time of his interaction with Deputy Parks and that the interaction of appellant and the police was a *Terry* stop rather than a custodial interrogation. Appellant's brief interaction with Deputy Parks was primarily an identification interview to determine if appellant was the same person Ms. Greenlee alleged had assaulted her daughter that night.

IV.

We turn next to appellant's argument that the trial court erred in admitting the statements from Deputy Parks' body-camera because they contained hearsay and were prejudicial. Defense counsel asked the trial court to exclude the following statements by Deputy Parks:

> "Okay, I just came from there, so you can stop the bullshit, okay. Just, just, I'd rather you be straight up honest with me, okay, because I don't have time for, for crap, okay. So I'm going to ask you again, why are you coming from Jennifer's house, what happened, okay, because I know where you came from."

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801.

Appellant argues that allowing the jury to hear that Deputy Parks viewed appellant's statements as "bullshit" and "crap" invaded the province of the jury, could have influenced the jury to disbelieve appellant's account, and violated the rule precluding one witness from giving an opinion about the credibility of another witness. The State argues that the statements were not hearsay because they were not offered for the truth of the matter but instead, they were relevant to provide context for the statements appellant made in response.

We hold that the trial court erred in admitting Deputy Parks' recorded statement expressing his disbelief of appellant's statements. Appellant's statements following Deputy Parks' expression of disbelief needed no explanation for context.

Ordinarily, it is improper for one witness to express an opinion as to the credibility of another witness.[3] The Court of Appeals explained this rule in *Bohnert v. State,* 312 Md. 266 (1988), stating as follows:

> "In a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury. *Battle v. State*, 287 Md. 675, 685, 414 A.2d 1266 (1980). Therefore, the general rule is that it is error for the court to make remarks in the presence of the jury reflecting upon the credibility of a witness. *Elmer v. State*, 239 Md. 1, 10-11, 209 A.2d 776 (1965). It is also error for the court to permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying. *Thompson v. Phosphate Works*, 178 Md. 305, 317-319, 13 A.2d 328 (1940); *American Stores v. Herman*, 166 Md. 312, 314-315, 171 A. 54 (1934). The Court of Special Appeals said in *Mutyambizi v. State*, 33 Md. App. 55, 61, 363 A.2d 511 (1976), cert. denied, 279 Md. 684 (1977):
>
> > Whether a witness on the stand personally believes or disbelieves testimony of a previous witness is irrelevant, and questions to that effect are improper, either on direct or cross-examination.
>
> *See State v. Allewalt,* 308 Md. 89, 121, 517 A.2d 741 (1986) (Eldridge, J., dissenting)."

Id. at 277-78.

Appellant contends also that Deputy Parks' statement of disbelief should have been excluded because it was irrelevant. Rule 5-401 states that relevant evidence is

[3] We do not discuss character evidence testimony and the admissibility of the opinion of a witness as to the truthfulness of another witness.

"evidence having any tendency to make 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." We do not agree with the State's relevancy argument. The statement was a comment on appellant's credibility, unnecessary, and could and should have been deleted or excised from the recording.

Although error, we hold that the erroneous admission of these statements was harmless error beyond a reasonable doubt. The harmless error test is well established in Maryland, often quoted from *Dorsey v. State*, 276 Md. 638 (1976) as follows:

> "[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of -- whether erroneously admitted or excluded -- may have contributed to the rendition of the guilty verdict."

Id. at 659 (footnote omitted).

The record contains testimony from Ms. Greenlee, B.L., X.J., Rose Jones, Charles Carter, and appellant describing the altercation, and the witnesses place appellant at Ms. Greenlee's house on the night in question. Appellant's defense is not inconsistent with whether, on the night in question, he was at Ms. Greenlee's house, that an altercation occurred there, and that he was asked to leave. We hold the error was harmless and that the admission of the statement did not contribute to the verdict.

V.

As to the jury instructions issue, appellant argues that the court erred or abused its discretion in failing to provide complete jury instructions regarding his statements. Appellant argues that the court erred in declining to instruct the jury as to "whether or not the Defendant was advised of his rights" in determining whether the statement was voluntary. Appellant contends that the jury should have been told in the jury instruction to consider whether he received *Miranda* warnings as a factor in considering whether the statements he made to Deputy Parks were voluntary.

The trial court's decision whether to give a jury instruction "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State v. Sayles*, 472 Md. 207, 230 (2021) (quoting *Appraicio v. State*, 431 Md. 42, 51 (2013)). Appellant has not made such a showing here.

Rule 4-325(c) requires the trial court to give a specific instruction when "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in jury instruction actually given." *Wright v. State*, 474 Md. 467, 484 (2021).

The trial court instructed the jury in conformity with Maryland Pattern Jury Instruction ("MPJI-Cr") 3:18,[4] modifying the instruction as follows:

[4] MPJI-Cr 3:18 reads as follows:

> "You have heard evidence that the defendant made a statement to the police about the crime charged. [You must first determine whether the defendant made a statement. If you find that the defendant made a statement, then you must decide whether the State has proven] [The State must prove] beyond a reasonable doubt that the statement was voluntarily made. A voluntary statement is one that under all circumstances was given freely.
> [[To be voluntary, a statement must not have been compelled or obtained as a result of any force, promise, threat, inducement or offer of reward. If you decide that the police used [force] [a threat] [promise or inducement] [offer of reward] in obtaining defendant's statement, then you must find that the statement was involuntary and disregard it, unless the State has proven beyond a reasonable doubt that the [force] [threat] [promise or inducement] [offer of reward] did not, in any way, cause the defendant to make the statement. If you do not exclude the statement for one of these reasons, you then must decide whether it was voluntary under the circumstances.]]
> In deciding whether the statement was voluntary, consider all of the circumstances surrounding the statement, including:
>
> (1) the conversations, if any, between the police and the defendant;
> (2) [whether the defendant was advised of [his] [her] rights;]
> (3) the length of time that the defendant was questioned;
> (4) who was pre sent;
> (5) the mental and physical condition of the defendant;
> (6) whether the defendant was subjected to force or threat of force by the police;
> (7) the age, background, experience, education, character, and intelligence of the defendant;
> [(8) whether the defendant was taken before a district court commissioner without unnecessary delay following arrest and, if not, whether that affected the voluntariness of the statement;]
> (9) any other circumstances surrounding the taking of the statement.

You have heard evidence that the defendant made a statement to the police about the crime charged. You must first determine whether the defendant made a statement. If you find that the defendant made a statement, then you must decide whether the State has proven beyond a reasonable doubt that the statement was voluntarily made. A voluntary statement is one that under all circumstances was given freely.

To be voluntary, a statement must not have been compelled or obtained as a result of any force, promise, threat, inducement or offer of reward. If you decide that the police used forced, a threat, promise, or inducement and/or offer of reward in obtaining defendant's statement, then you must find that the statement was involuntary and disregard it, unless the State has proven beyond a reasonable doubt that the force, threat, promise, or inducement and/or an offer of reward did not, in any way, cause the defendant to make the statement. If you do not exclude the statement for one of

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If you find beyond a reasonable doubt that the statement was voluntary, give it such weight as you believe it deserves. If you do not find beyond a reasonable doubt that the statement was voluntary, you must disregard it.

Notes on Use

The initial bracketed language in the first paragraph should only be given if there is an issue as to whether the defendant actually made a statement. The instructions in the second paragraph should be given if there is an issue, generated by the evidence, about whether force, or a promise, threat, or offer of reward compelled or produced a statement. Factor (2) in the third paragraph should be given in those cases in which a person in custodial interrogation was entitled to be informed of his rights, although in pre-custodial settings, the failure of police officers to advise a person of what rights he might have can be considered under the other factors, especially factors (7) and (9). Factor (8) should only be given if there is an issue concerning the promptness of presentment before a judicial officer after arrest.

> these reasons, you then must decide whether it was voluntary under the circumstances.
>
> In deciding whether the statement was voluntary, consider all of the circumstances surrounding the statement, including:
>
> (1) the conversations, if any, between the police and the defendant;
> (2) the length of time that the defendant was questioned;
> (3) who was present;
> (4) the mental and physical condition of the defendant;
> (5) whether the defendant was subjected to force or threat of force by the police;
> (6) the age, background, experience, education, character, and intelligence of the defendant; and
> (7) any other circumstances surrounding the taking of the statement.
>
> If you find beyond a reasonable doubt that the statement was voluntary, give it such weight as you believe it deserves. If you do not find beyond a reasonable doubt that the statement was voluntary, you must disregard it.

The question appellant raises is whether the court was required to instruct the jury specifically to consider *Miranda* advisement of rights in the voluntariness analysis. We have found, as did the trial court, that appellant was not in custody when the statement in question was made. Appellant argues that notwithstanding that finding, the court was required to include the *Miranda* warnings as a factor the jury should consider in assessing voluntariness.

We hold that the court did not err or abuse its discretion in declining to include *Miranda* rights advisement as a factor in the jury instruction. As is evident from the instruction given, the jury was instructed as to the definition of voluntariness---that the

statement must have not been compelled or obtained as a result of any force, promises, threats, inducements or offers of reward. The jury was told that if it did not find beyond a reasonable doubt that the statement was voluntary, the statement must be disregarded. As far as the Rule or the Constitution requires, that is all that is required. The jury was instructed to consider "all of the attendant circumstances" that the pattern instruction, or the actual instructions, included as an aid, but excluding *Miranda* advisements does not make the instruction erroneous. *See State v. Burley*, 523 S.W.2d 575, 578 (Mo. Ct. App. 1975) (holding that when the jury was instructed that it cannot consider a statement unless voluntary and not "procured by coercion or threats or through fear . . . no separate or further instruction should be given on the effect of a failure to give the *Miranda* warnings or the effect of a waiver of defendant's rights thereunder").[5]

[5] The Missouri court noted that "all of such facts, including any claimed failure to give the *Miranda* warnings and any claimed waiver of rights thereunder, are circumstances or factors affecting the ultimate issue of whether the statement was freely and voluntarily made and may be so argued to the jury." *Id.* at 578. Because the issue was not raised before us, we take no position as to whether defense counsel could argue to the jury the lack of Miranda warnings as a factor to consider in determining voluntariness.

VI.

We turn to appellant's final issue, the sufficiency of the evidence to sustain his convictions for sexual abuse of a minor, sexual offense in the third degree, and sexual offense in the fourth degree. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *See State v. Morrison*, 470 Md. 86, 105 (2020). The key inquiry 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." *State v. Raines*, 326 Md. 582, 589 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We give due deference to the lower court and limit our concern as to whether the verdicts were supported by sufficient evidence that "either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994).

Appellant argues that the State failed to prove the elements for sexual abuse of a minor, particularly § 3-602(b)(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." Responsibility for the supervision of a child may be evident upon the "mutual consent, express or implied, by the one legally charged with the care of the child and by the one assuming the responsibility." *Pope v. State*, 284 Md. 309, 323

(1979). Appellant asserts that the State failed to establish that he had permanent or temporary care or custody or responsibility for the supervision of B.L. We disagree. Ms. Greenlee testified that she transferred custody to her son X.J., and X.J. then transferred custody to appellant when he asked appellant if it was okay to leave B.L. alone in the house with appellant while he left the house with his friend. The State noted that appellant agreed to help B.L. with her schoolwork while he was watching her. Appellant agreed to be responsible for B.L.'s supervision, satisfying § 3-602.

We turn to appellant's challenge to his conviction for third degree sexual offense and fourth degree sexual offense. Section § 3-307(a)(3) prohibits sexual contact with a victim under the age of 14 years old. Section 3-307(e)(1) defines sexual contact as "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." Appellant contends that the State produced insufficient evidence that he engaged in intentional touching as defined by the statute. We disagree. Ms. Green testified that B.L. told her that appellant "rubbed her crotch" and was "treating her like his girlfriend." Appellant contends that this statement "could be interpreted in different ways." We reject this argument and find that this evidence is sufficient to support a rational inference that appellant engaged in the statute's prohibited sexual offense.

Appellant's final assertion is that the fourth-degree sexual offense was not supported by sufficient evidence to support the conviction. Section 3-307(b)(1) prohibits

"engag[ing] in sexual contact with another without the consent of the other." Appellant contends that the State's evidence failed to establish 1) that there was sexual contact, 2) that the contact was made against the will or against the consent of B.L., or 3) that it was made for the purpose of sexual arousal, gratification, or abuse of either party. We disagree and hold that the State established each element to sustain the conviction.

B.L. testified that appellant rubbed her crotch and appellant even admitted, at least inadvertently, that he touched B.L. when he stated that he had a dream that someone was caressing him, so he caressed them back. Ms. Greenlee also testified that after B.L. told her that appellant had been rubbing her crotch that she looked scared and had been crying. The State sufficiently demonstrated each element of § 3-307(b)(1). The evidence viewed in the light most favorable to the State supports the judgment of conviction beyond a reasonable doubt.

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