Circuit Court for Montgomery County
Case No. 99919

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1113

September Term, 2017

LUIS ALBERTO AREVALO

v.

STATE OF MARYLAND

Eyler, Deborah S.
Meredith,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: May 14, 2018

*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.

Appellant, Luis Alberto Arevalo, was charged in the Circuit Court for Montgomery County with multiple sexual offenses against two victims, D.A. and K.C., both minors. Regarding D.A., the State charged Arevalo with second-degree rape, three counts of second-degree sex offense, two counts of third-degree sex offense, and sexual abuse of a minor. As to K.C., the State charged Arevalo with second-degree rape, two counts of second-degree sex offense, and sexual abuse of a minor. After Arevalo was tried in absentia[1] over 9-11 May 2005, a jury convicted Arevalo of the following against D.A.: second-degree rape, second-degree sex offense, third-degree sex offense, and sexual abuse of a minor. The jury convicted Arevalo, as to K.C., of second-degree sex offense, third-degree sex offense, and sexual abuse of a minor. On 7 July 2017,[2] he was sentenced to 75 years of active incarceration.

Arevalo poses the following questions on direct appeal:

I. Did the trial court abuse its discretion in asking a prejudicial *voir dire* question?

II. Was the State's proffered evidence sufficient to sustain Arevalo's convictions on Counts 7 (child sexual abuse against D.A.) and 11 (child sexual abuse against K.C.)?

III. Did the circuit court err in not granting Arevalo's motion to sever Counts 7 and 11?

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[1] Arevalo failed to appear for his trial. He was found to be in absentia.

[2] After the convictions, the United States Marshal's Office and the Montgomery County State's Attorney's Office undertook a manhunt to locate Arevalo. He was found in Houston, Texas, sometime within the past three years (we could not find in the record the precise date of Arevalo's re-apprehension and return to Maryland for sentencing).

Facts

Arevalo lived in 2004 in an apartment in Silver Spring, MD. The other residents there were Maria Garcia (his sister-in-law), her son, her two nieces (D.A. and K.C.),[3] two nephews, and her sister (D.A. and K.C.'s mother). On 1 April 2004, Garcia returned to the apartment at approximately 3:00 p.m. She observed Arevalo drinking beer. At approximately 7:00 p.m., Garcia entered their joint[4] bedroom and observed Arevalo standing near the bed. Garcia's sister was out that evening. Garcia noticed D.A. and K.C. hiding in the en suite bathroom. They appeared distressed visibly. Before Garcia could speak with D.A. and K.C., Arevalo interjected that she should disregard anything the girls may say. D.A. and K.C. confided to Garcia that "Uncle Luis" touched them sexually. Garcia called 911.

Officers Dennis Whalen and Raul Delgado of the Gaithersburg City Police Department (GCPD) responded to the call. The officers interviewed all of the persons in the apartment. D.A. "told [O]fficer [Whalen] that [] Arevalo" sodomized her. K.C. told "him that [] Arevalo put [his genitals] 'in the general area of her anal.'" Arevalo's initial version of the events was that he was using the bathroom off the bedroom when one of the girls opened the door and started to cry. His story of the evening's events changed somewhat, however, in the course of later interviews by Officer Delgado, and Detectives

[3] D.A. and K.C. will be referred to (when relevant) as either the "children" or the "girls."

[4] Arevalo shared a bedroom with D.A. and K.C., their mother and their two brothers.

Pat Word and Sally Magee of the Family Crimes Division at the GCPD.[5] Detective Magee accompanied the children and Garcia to the Shady Grove Hospital at approximately 1:00 a.m. on 2 April 2004 for physical examinations of the girls.

The grand jury returned, on 6 May 2004, an eleven-count indictment of various sexual offenses against Arevalo. During *voir dire* in Arevalo's trial, the presiding judge propounded to the venire the State's proposed question 14: "[a]re there any members of the prospective jury panel who believe that children are not capable of accurately reporting facts about child abuse?"[6] Arevalo's defense counsel objected to this question, but only *after* it and a second question were put to the venire. At the conclusion of *voir dire*, the judge asked counsel if they were satisfied with the questions posed. Both expressed satisfaction, noting no objections. Similarly, counsel accepted the jury as empaneled.

The trial court accepted Nurse Heidi Bresee of the Shady Grove Hospital as the State's expert witness in sexual assault exams and pediatric nursing. Nurse Bresee examined and collected forensic rape kits from D.A. and K.C. During Nurse Bresee's examination of D.A., she observed a small tear in D.A.'s vaginal area. Nurse Bresee testified that the tear was consistent with "penetrating trauma." She observed no physical trauma on K.C.

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[5] Arevalo told Officer Delgado that he was on the toilet, actually, when one of the girls walked into the bathroom. Arevalo told Detective Word that the girls walked in on him bathing with the two other children in the household.

[6] K.C. was eight years old and D.C. was nine years old at the time of Arevalo's trial.

The trial court accepted, also as a State witness, Karolyn Tontarsky, a forensic scientist of the Montgomery County Crime Lab, as an expert in forensic biology. Tontarsky examined the girls' forensic rape kits collected by Nurse Bresee, as well as physical items and DNA samples recovered from D.A. and K.C. at the hospital. The results of these examinations revealed as follows:

> When reviewing D.A.'s kit, Tontarsky found (1) [] Arevalo's sperm on a sample collected from D.A.'s thighs/external genitalia and on a sample collected from D.A.'s perianal buttocks; (2) [] Arevalo's sperm on a swab of D.A.'s back; (3) a non-sperm fraction from the samples mentioned in (1) that yielded a DNA profile consistent with a mixture of [] Arevelo's and D.A.'s DNA; (4) a non-sperm fraction from D.A.'s back swab in which [] Arevalo was a major contributor and in which both D.A. and K.C. could not be excluded as minor contributors; (5) a partial mixture found in a non-sperm fraction from K.C's thighs/external genitalia that was consistent with DNA from both [] Arevalo and K.C.; (6) a mixture of K.C.'s DNA and []Arevalo's DNA on K.C's underpants; and (7) a non-sperm fraction on K.C.'s shirt that yielded [] Arevalo's DNA.

K.C. testified that, on the evening of 1 April 2004, Arevalo instructed her and her sister that it was time to go to bed. Arevalo accompanied them. Upon entering the bedroom, Arevalo told the girls to pull down their pants, whereupon he "did sex" with her and her sister. She testified further that Arevalo sodomized her.[7] K.C. explained that similar incidents happened in the past when their mother was not home, recounting that on

[7] Nurse Bresee found no penetrating trauma to K.C.'s anus. Nurse Bresse testified, however, that it is not uncommon to find no physical injury following penetrating trauma to the anus because it has the normal capacity to dilate to accommodate the passage of stools (implying that the same dilation capacity operates irrespective of the direction of the force).

one of those occasions Arevalo forced her to touch and lick his genitals, and on another he engaged in sexual intercourse with her. No time frame for the events was offered, however.

D.A. testified similarly to her sister, noting that, after Arevalo told her and her sister to take their clothes off, and placed his genitals on her back and on, but not inside, her "butt." Arevalo engaged, however, in sexual intercourse with her. Moreover, she testified that Arevalo instructed the children to place their mouths on his genitals.

Analysis

I. The *Voir Dire* Question.

Arevalo contends that the circuit court abused its discretion in asking the prospective venire "[a]re there any members of the prospective jury panel who believe that children are not capable of accurately reporting facts about child abuse?" He avers that this question created a chilling effect by suggesting to the jury a vulgarism in questioning the accuracy of K.C.'s and D.A.'s expected testimony.

The State urges us, conversely, to decline to review the merits of Arevalo's claim because he failed to preserve properly it for appellate review. To that end, the State points to the facts that Arevalo noted his satisfaction with the trial court's *voir dire* and made no objection to the empaneled jury.

Maryland Rule 4–323(c)[8] governs the "manner of objections during jury selection," including objections made during *voir dire*. *Marquardt v. State*, 164 Md. App. 95, 142, 882

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[8] The Rule provides, in pertinent part, that

it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take

A.2d 900, 928 (2005) (citing *Baker v. State*, 157 Md. App. 600, 609, 610, 853 A.2d 796, 802 (2004)). It is sufficient that a party make known to the trial court the action that the party desires the court take or the objection to the action of the court. Md. Rule 4–323(c); *see also Marquardt*, 164 Md. App. at 143, 882 A.2d at 928. This objection need not be a formal exception to the ruling or action, Md. Rule 4–323(d); rather, the objector need only make "known to the circuit court 'what [is] wanted done.'" *Marquardt,* 164 Md. App. at 143, 882 A.2d at 928 (quoting *Baker*, 157 Md. App. at 610, 853 A.2d at 802).

During *voir dire*, the following germane colloquy took place:

> THE COURT: . . . . Are there any of you who if you were sworn to sit on this jury would require more proof in a child abuse case than you would in any other case or, in fact, less proof than you would if you were hearing some other type of case?[]
>
> [(no response from the parties or venire)]
>
> [THE COURT:] Are there any members of the prospective jury panel who believe that children are not capable of accurately reporting facts about child abuse?
>
> [(no response from the parties or venire)]
>
> [THE COURT:] Are there any of you who would happen to give more weight or less weight to the testimony of a child who is a witness?
>
> [(one prospective juror responded to this question. After the person was questioned at the bench, the following ensued)]
>
> [DEFENSE COUNSEL]: Your Honor, while I'm, while I'm here, I'd like to interpose an objection to the asking. I did not know which questions Your Honor would ask, No. 14, does anyone believe children are not capable of

> or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs.

accurately reporting facts about child abuse? I think that's a loaded question. I mean to ask a neutral question such as does anyone, would anyone be more inclined or less inclined to believe a witness because it's a child, but this basically, I think –

THE COURT: Well, I've already asked it, A. and, B., there was no response So –

[DEFENSE COUNSEL]: Well, I, I know you've asked it and I was unaware that you were asking, but I, I think it is a very loaded question and the fact that there was no response doesn't necessarily mean that this has impregnated the jury with this idea that we're supposed to go in there and believe the kid because it's a kid.

THE COURT: Okay.

[DEFENSE COUNSEL]: Anyway, thank you.

THE COURT: So noted.

[DEFENSE COUNSEL]: Thank you.

At the conclusion of *voir dire*, the trial court asked the parties if they were satisfied with the questions asked. All counsel replied "satisfied," noting no objections. Likewise, the empaneled jury was accepted by counsel.

"Generally, a party waives his or her *voir dire* objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process." *State v. Stringfellow*, 425 Md. 461, 469, 42 A.3d 27, 32 (2012) (citing *Gilchrist v. State*, 340 Md. 606, 617, 667 A.2d 876, 881 (1995)). Moreover, objections going to the inclusion or exclusion of a prospective juror (or jurors) or the venire "are treated differently for preservation purposes because accepting the empaneled jury, without

qualification or reservation, 'is directly inconsistent with [the] earlier complaint [about the jury],' which 'the party is clearly waiving or abandoning.'" *Stringfellow*, 425 Md. at 470, 42 A.3d at 32 (2012) (quoting *Gilchrist*, 340 Md. at 618, 667 A.2d at 881–82). Thus, objection to a propounded, purportedly prejudicial, *voir dire* question relates directly to the composition of the jury. *Stringfellow*, 425 Md. at 472, 473, 42 A.3d at 34, 35. Such an objection is waived, therefore, when a party accepts ultimately the jury empaneled, without qualification or reservation. *Id.* (explaining that a *voir dire* question, if prejudicial, injects the very prejudice that *voir dire* attempts to filter out and, is thus, waived when a party acquiesces to the empaneled jury).

Arevalo's counsel's objection, even assuming it was timely (following as it did the trial judge asking the jury the State's *voir dire* question 14 and another question), conformed to Md. Rule 4-323(c). His assertion that the *voir dire* question was "loaded," by its suggestion that "believing the testimony of a child witness was the only option[,]" related directly to the composition of the jury. At the conclusion of *voir dire*, however, Arevalo's counsel noted to the trial judge that he was "satisfied" with the overall composition of the venire. Arevalo's acceptance of the venire, without contemporaneous renewal of his complaint, waived his earlier noted objection. *See id.* Thus, his appellate challenge on this score is waived.

II. The State's Evidence Supporting Counts 7 and 11.

Arevalo argues that the State presented insufficient evidence to sustain the convictions on Counts 7 and 11 charging sexual abuse of a minor against D.A. and K.C.,

respectively. Arevalo contends, under the principles of variance,[9] the State failed to prove at trial, in light of the precise language of Counts 7 and 11 in the indictment,[10] his continuing course of sexually abusive conduct occurring before 1 April 2004.

The State asserts, however, that this allegation is unpreserved. Arevalo failed to argue, in his motion for judgment of acquittal, a variance existing between Counts 7 and 11 of the indictment and the evidence the State offered at trial.

Indeed, at the close of all of the evidence, Arevalo's counsel moved for a judgment of acquittal. Regarding Count 7, charging sexual abuse of a minor against D.A., Arevalo's counsel argued:

> [DEFENSE COUNSEL]: [W]e think that there is very, very little if any testimony that there was a continuing pattern of abuse prior to that time [1 April 2004]. Certainly[,] no dates were given, no—very, very cryptic testimony was given with regard to that period of time.

[9] A variance "has been defined 'as a difference between the allegations in a charging instrument and the proof actually introduced at trial.'" *Crispino v. State*, 417 Md. 31, 51, 7 A.3d 1092, 1104 (2010) (quoting Black's Law Dictionary 1692 (9th ed.2009)).

[10] Counts 7 and Count 11 state (identifying D.A. for Count 7 and K.C. for Count 11)

> [t]he Grand Jurors of the State of Maryland, for the body of Montgomery County, upon their oaths and affirmations, present that Luis Albert Arevalo, *on or about and between September 1, 2002 and April 1, 2004, (due to the continuing course of conduct and the young age of the victim and the passage of time and the nature of the offense, the State is unable to further specify a date*) in Montgomery County, Maryland, while being a household member of [D.A.] . . . , did unlawfully cause abuse to said child, in violation of Criminal Law Article Section 3-602 of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

(emphasis added).

Similarly, as to Count 11, charging sexual abuse of a minor against K.C., he contended

> [DEFENSE COUNSEL]: and then the last one would be . . . Count 8 which would be my Count 11 which then goes to [K.C.], the course of conduct between [1 April 2002] and [30 March 2004]. Again[,] we find not even skeletal evidence here by vague [a]llusions to something that may or may not have happened and sometime in the past.
>
> [DEFENSE COUNSEL:] We just don't find that to be enough evidence from which a jury ought to find beyond a reasonable doubt that he committed an act during that period.
>
> (The State argued in response as follows)
>
> [STATE]: With respect to Count 7, the sex abuse of a minor [D.A.], we don't need to show a continuing course. We showed a continuing course which I think we did. [D.A.] had said that this had occurred to her before more than once. We don't necessarily need that continuing course of conduct. The acts that occurred on the April 1st date[,] which is the ending date for the child abuse, are sufficient to sustain a conviction for sex abuse of a minor.
>
> * * *
>
> [STATE:] [Regarding] [f]ormer [Count] 11 . . . same arguments as to [K.C.].

The trial court responded,

> [THE COURT]: I've checked my notes, read them and highlighted what I believe to be the relevant portions and I agree with the State's recitation as to what the evidence showed. It almost conforms to my summary exactly. I'll deny the motions. Thank you.

Maryland Rule 8–131(a) states: "[o]rdinarily [] the appellate court will not decide any [ ] issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." *See also Breakfield v. State*, 195 Md. App. 377, 390, 6 A.3d 381, 388

(2010) (elaborating that Md. Rule 8-131(a) prevents parties from raising issues for the first time on appeal).

Arevalo, in his motion for judgment of acquittal, claimed that the State failed to present evidence of a pervasive course of sexual abuse against K.C. and D.A. before 1 April 2004. Arevalo did not argue before the trial court, however, a variance existing between the State's allegations in Counts 7 and 11 in the indictment, and the evidence.[11] Arevalo cannot now make this assertion for the first time on direct appeal.

III. Arevalo's Motion to Sever Counts 7 and 11.

Counts 1-7 of the grand jury's indictment concerned offenses committed against D.A., as follows:

Count 1: second-degree rape on or about 1 April 2004;

Count 2: second-degree sexual offense on or about 1 April 2004 ("fellatio");

Count 3: second-degree sexual offense on or about 1 April 2004 ("anal intercourse");

Count 4: third-degree sexual offense on or about 1 April 2004 ("rubbed penis on victim['s] buttocks");

Count 5: second-degree sexual offense *on or about and between* 1 September 2002 and 30 March 2004 ("fellatio");

[11] *See Crispino v. State*, 417 Md. 31, 51, 7 A.3d 1092, 1104 (2010) (explaining that "the time period proven need not coincide with the dates alleged in the charging document, so long as the evidence demonstrates that the offense was committed prior to the return of the indictment and within the period of limitations.").

Count 6: third-degree sexual offense *on or about and between* 1 September 2002 and 30 March 2004 ("masturbation of defendant");

Count 7: sexual abuse of a minor *on or about and between* 1 September 2002 and 1 April 2004.

Counts 8-11 accused Arevalo of committing offenses against K.C.:

Count 8: second-degree sexual offense on or about 1 April 2008 ("anal intercourse");

Count 9: second-degree sexual offense on or about 1 April 2008 ("fellatio");

Count 10: second-degree rape *on or about and between* 1 September 2002 and 30 March 2004;

Count 11: sexual abuse of a minor *on or about and between* 1 September 2002 and 1 April 2004.

(emphasis added).

Arevalo's counsel filed a pre-trial motion to sever Counts 1-4, 8 and 9 (alleged sexual offenses occurring on 1 April 2004) from Counts 5-7, 10 and 11 (alleged sexual offenses occurring on or about and between 1 September 2002 - 30 March 2004 and 1 April 2004). He asserted that the jury would be inclined unfairly to convict him of Counts 1-4, 8 and 9 if they were considered simultaneously with Counts 5-7, 10 and 11. Although granting initially Arevalo's motion to sever, the trial court granted subsequently the State's request for reconsideration as to the severance of Counts 7 and 11.[12] The trial court, over

[12] The State urged the trial court, as follows:

Arevalo's opposition, agreed with the State, and ordered Counts 7 and 11 be tried with Counts 1-4, 8, and 9.

Arevalo asserts that the circuit court erred in doing so. Moreover, this failure prejudiced Arevalo "because [] the accumulation of evidence [before] the jury [regarding Counts 1-4, 8 and 9] bolster[ed] a weaker case [as to Counts 7 and 11]." The State responds that Counts 7 and 11 encompass both a single act *and* multiple acts of abuse taking place on and (potentially) before 1 April 2004. Counts 7 and 11 did not charge exclusively child sexual abuse occurring on dates before 1 April 2004.

Md. Rule 4–253(c) provides that the trial court "may" order a separate trial for different counts "[i]f it appears that any party will be prejudiced by the joinder for trial of counts[.]" In determining whether severance is appropriate, two factors must be considered:

> first[,] is [] whether [the] evidence as to each of the accused's individual offenses would be mutually admissible at separate trials concerning the offenses? Because this question requires a legal conclusion, *we give no deference to a trial court's ruling on appeal.* To resolve this question, the trial court is to apply the "other crimes" analysis announced in *State v. Faulkner*, 314 Md. 630, 552 A.2d 896 (1989). . . . The second question is, whether "the interest in judicial economy outweighs any other arguments favoring severance? This question requires a balancing of interests by the trial court, and *we will only reverse if the trial judge's decision was a clear abuse of discretion.* To resolve this second question, the trial court weighs

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> Your Honor, if I could just ask for clarification to make sure that you are really on the same page, the sex abuse of a minor charge, the time frame encompasses September 1st of 2002 to April 1st of 2004 which you have now severed from the date on April 1st so that means that in the second trial, the State is going to be moving to get the DNA evidence once again into that trial to prove the sex abuse of a minor case because it goes until April 1st of 04.

> the likely prejudice against the accused in trying the charges together against considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses.

Cortez v. State, 220 Md. App. 688, 694–95, 105 A.3d 589, 592-93 (2014) (emphasis added and internal citations and quotation marks omitted).

As to the first factor, evidence of other crimes is inadmissible to prove a defendant's guilt based on his or her propensity to commit crime or his/her criminal character. Md. Rule 404(b); *Faulkner*, 314 Md. at 633, 552 A.2d at 897. "Evidence of other crimes may be admitted, however, if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *Faulkner*, 314 Md. at 633, 552 A.2d at 897. "Other crimes" evidence may be admissible if introduced to establish motive, intent, absence of mistake, identity, or common scheme or plan. *Solomon v. State*, 101 Md. App. 331, 353, 646 A.2d 1064, 1075 (1994). Another admissibility exception is recognized in circumstances where "the several offenses are so connected in point of time or circumstances that one cannot be fully shown without proving the other[.]" *Solomon*, 101 Md. App. at 374, 646 A.2d at 1085 (quoting *Tichnell v. State*, 287 Md. 695, 712, 415 A.2d 830, 839 (1980)).

Pertinent to Counts 7 and 11, Md. Code (2003, 2013 Repl. Vol.), § 3-602(b)(1) of the Criminal Law Article (Crim. Law) (defining sexual abuse of a minor) states 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." Crim. Law § 3-602 (a)(4)(i) defines child "sexual abuse" as an "act that involves sexual molestation or

exploitation of a minor, whether physical injuries are sustained or not[;]" which includes: "(1) incest; (2) rape; (3) sexual offense in any degree (4) sodomy; and, (5) unnatural or perverted sexual practices."

Cooksey v. State postulated that child sexual abuse, as defined currently in Crim. Law §3-602, is "a crime that can be committed both by a single act and through a continuing course of conduct consisting of multiple acts." *Cooksey*, 359 Md. at 24, 752 A.2d at 618. 359 Md. 1, 24, 752 A.2d 606, 618 (2000). *Cooksey* observed that the "gravamen of the offense [of child sexual abuse] is not the sexual act itself . . . but rather the abuse of the child. That abuse can as easily arise from several qualifying acts as from one." *Cooksey*, 359 Md. at 23, 752 A.2d at 618. A jury could convict conceivably a defendant of child sexual abuse under either scenario. *Cooksey*, 359 Md. at 24, 752 A.2d at 618.

> [A] single act, of a type included within the definition of 'sexual abuse,' *may be separately prosecuted and will support a conviction for that offense*. . . . [A] charge of sexual child abuse may be sustained on evidence that would not support a conviction under the sexual offense, rape, sodomy, or perverted practice laws.

Cooksey, 359 Md. at 23–24, 752 A.2d at 618 (emphasis added).

Counts 7 and 11 in the indictment denoted that Arevalo committed child sexual abuse against K.C. and D.A. "on or about and between September 1, 2002 and April 1, 2004, (due to the continuing course of conduct and the young age of the victim and the passage of time and the nature of the offense, the State is unable to further specify a date)"

(N.B. - this parenthetical is absent from the remaining nine counts in the indictment). The State explained to the trial judge that

> [t]he *on or about and in between dates* is because it happened so frequently and because the nature of the offense, the passage of time and the age of the victim, the child was unable to say that on September 30th of 2003, I was raped in [the] bedroom. They were able to say that this happened to them, but they cannot give a specific date. That is why none of this should be severed, Your Honor, because we have a continuing course of conduct alleged within the child abuse.
>
> In the child abuse count we have the entire date range alleged which means all of the events that occurred within that date range are admissible in order to prove that child abuse. That's the only way the State can prove the continuing course of conduct. The child abuse ends on April 1st of 2004.

(emphasis added).

We agree with the trial court that the State, in order to obtain the convictions based on the language contained in Counts 7 and 11 of the indictment, was not obliged to show Arevalo's engagement in a continuing course of sexual child abuse[13] before 1 April 2004. *See Cooksey*, 359 Md. at 23–24, 752 A.2d at 618. Child sexual abuse is a crime that can be committed *both* by a single act *and* through a continuing course of illicit conduct. *Id.* (explaining the prospect of a jury finding evidence, contained within a State's accusation of a continuing course of child sexually abusive conduct, sufficient to constitute abuse) (emphasis added). The State is capable of presenting admissible evidence supporting Counts 1-4, 8, and 9 that would support also Counts 7 and 11. Moreover, the State asserted

[13] The State protests that it is capable of proving that Arevalo committed child sexual abuse prior to 1 April 2004 because K.C. testified that Arevalo had sexually abused her in the past.

to the trial court that, if it were to sever Counts 7 and 11 from Counts 1-4, 8, and 9, then it would move "to get the DNA evidence once again into that [separate] trial to prove sex abuse of a minor [] because [the abuse went] until April 1st of 04."

The State explained that, because of the passage of time and the young age of each victim, it was unable to pinpoint (as clarified in the parenthetical accompanying Counts 7 and 11) an exact date or dates when the sexual abuse took place, aside from the events occurring on 1 April 2004. Arevalo does not make any discernable argument in his brief relating to the mutual admissibility of evidence factor. We perceive no error in the trial court's determination as to the mutual admissibility of the evidence necessary for the State to support Counts 1-4, 7-9, and 11.

We balance next any potential prejudice from the circuit court's joinder against the interest of judicial economy. *See Solomon*, 101 Md. App. at 347, 353, 646 A.2d at 1071 (1994). This balancing is subject to an abuse of discretion standard, and any judicial economy will suffice to permit joinder. *Conyers v. State*, 345 Md. 525, 556, 693 A.2d 781, 796 (1997). No reported Maryland appellate decision appears to have found an abuse of discretion at this stage of the severance-balancing test. *Taylor v. State*, 226 Md. App. 317, 376, 130 A.3d 509, 544 (2016) (citing *Solomon*, 101 Md. App. at 348, 646 A.2d at 1072) ("we have found no Maryland decision where, once the initial hurdle of mutual admissibility has been cleared, a decision by a trial judge to order a trial joinder has ever been held to be an abuse of discretion.").

The trial court's joinder of Counts 7 and 11 with Counts 1-4, 8, and 9 preserved time and judicial economy by reducing the duplication of witness testimony and unnecessary prejudice resulting thereof. Arevalo concedes that "convictions for sexual abuse of a minor may be based on conduct occurring on a single day." He contends, however, that the language in the indictment mandates the State support Counts 7 and 11 with evidence of Arevalo's prolonged child sexual abuse of K.C and D.A. occurring on dates preceding 1 April 2004. This contention relates to his mistaken premise that the State's evidence supporting Counts 7 and 11 would be inadmissible as to Counts 1-4, 8, and 9. Moreover, the "prejudice" incurred allegedly by Arevalo is excluded from the definition of "prejudice" when admissible evidence is admitted against him. *Solomon*, 101 Md. App. at 348, 646 A.2d at 1072; *see also Ogonowski v. State*, 87 Md. App. 173, 186-87, 589 A.2d 513, 520 (1991) (prejudice is a term of art and "refers only to prejudice resulting to the defendant from the reception of evidence that would have been inadmissible against that defendant had there been no joinder."). We perceive no abuse of discretion by the trial court in denying severance of Counts 7 and 11 from Counts 1-4, 8, and 9.

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