Circuit Court for Prince George's County
Case No. CT16-0202X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1117

September Term, 2018

EDGAR CORONADO

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 19, 2022

Edgar Coronado was convicted in the Circuit Court for Prince George's County of three sexual offenses—sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of a minor—that he committed against his stepdaughter. On appeal, he argues that the evidence was insufficient as a matter of law to support his convictions. We affirm.

I. BACKGROUND

Between 2009 and 2015, Mr. Coronado lived with his ex-wife and her four children, including the victim in this case, R.[1] According to R, the entire family all slept in the same room.[2] Mr. Coronado and R's mother slept in one bed and R slept with her younger brother, G, on a bunk bed. The two younger children slept in their own bed. R testified that on September 11, 2015, Mr. Coronado touched her skin with his hands while they were in the bedroom. At first, R testified that she could not remember exactly what happened but recalled that Mr. Coronado "did something weird that [she] didn't like in bed" when she was six or seven years old. R was wearing clothes at the time of the incident, but Mr. Coronado was naked. During the incident, G was in the bedroom with R and Mr. Coronado while R's mother was in the kitchen making food for Mr. Coronado. G testified that he was in his bed when he saw Mr. Coronado touch R on her private part, which he called her

[1] We'll use randomly selected initials for the children in this case to protect their privacy.

[2] At trial, R's mother testified that Mr. Coronado did not sleep in the same room as the remainder of the family. Although several of the facts presented at trial were in dispute, it is not our role, as an appellate court, to reweigh the evidence or assess the credibility of witnesses independently. *See State v. Manion*, 442 Md. 419, 431–32 (2015).

"[w]iener." G recalled that Mr. Coronado and R were in separate beds, but Mr. Coronado scooted over to R and then touched her. G stated that R was wearing clothes. He said that Mr. Coronado's hands went under R's clothes and R told him to stop.

R later told her maternal grandmother about the incident. Her grandmother testified that on the day after the incident, she picked up R from the family home and helped R get ready for school. R's grandmother noticed that R looked sad, and when she asked R about it, R said "'Edgar touched me.'" R pointed to her vagina and told her grandmother that "'[h]e touched me here[.]'" R's grandfather also disclosed that when he was taking her to school that same morning, R told him "that Mr. Coronado got into the bed in which she was sleeping and he was like wanting to introduce this finger [] in the vagina." R reported the incident to the school and R's grandparents were called to the school. That day, R's grandfather also notified the police. Detective Jenifer Reio then interviewed R. R told Detective Reio that Mr. Coronado touched her and it hurt. R never received a sexual assault examination.

At trial, the State asked R to detail where Mr. Coronado touched her by having her mark up an anatomical drawing of a girl. When the State asked R for the name of the body part she circled, R responded "I forgot," but the drawing depicts a circle covering the lower abdomen and upper thigh area.

At the close of the State's case, defense counsel moved for judgment of acquittal on all counts, arguing that the State had not met its burden on the elements necessary to prove sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of

a minor:

> [THE COURT]: Any motions on the four counts?
>
> [COUNSEL FOR MR. CORONADO]: Yes, Your Honor. With regard to all counts, I would suggest to the Court that on the issue of fourth degree sex offense and third degree sex offense and with the child abuse of a minor, that the only testimony we have as to age is approximately. That there is no actual age that is being introduced into evidence, only an approximate age.
>
> I do not think that even in the generous light that the Court has to look would meet the elements of a fourth degree sex offense, third degree sex offense and age-based fourth degree sex offense, third degree sex offense and because there is no predicates, that would not meet the elements of sexual abuse of a minor.

Defense counsel argued specifically that none of the elements of sexual offense in the third degree had been met:

> [COUNSEL FOR MR. CORONADO]: I would also indicate that at least with regard to the third degree sex offense, separate and apart from that, for them to prove that particular offense, if they are going on anything more than an age-based—
>
> [THE COURT]: Anything more than that?
>
> [COUNSEL FOR MR. CORONADO]: An age-based variety of that, there has been absolutely no testimony concerning—
>
> [THE COURT]: We will get into that in jury instructions but if there is any portion of the offense in the elements—are you arguing that none of the elements of third degree exist?
>
> [COUNSEL FOR MR. CORONADO]: I am arguing that none of the elements of third degree sex offense have been proven in this case, Your Honor, yes I am.

The court denied Mr. Coronado's motion for judgment of acquittal.

At the conclusion of the presentation of all the evidence, defense counsel renewed their motion for judgment of acquittal. In addition to reasserting that the elements for sexual

offense in the third degree had not been met, counsel argued that the State had failed to prove the elements to sustain a conviction for sexual offense in the fourth degree:

> [COUNSEL FOR MR. CORONADO]: Your Honor, if I could. We would renew our motion. Same grounds as before, obviously, the standards are different and I would with particularization as to the fourth degree sexual offense, again, it requires an act that is—I do not have the instruction in front of me.
>
> [THE COURT]: The sexual arousal and gratification.
>
> [COUNSEL FOR MR. CORONADO]: And it requires an act that is against the will and without the consent and it requires both. . . .
>
> The only testimony we have is that there was a touching, an objection and then it stopped. So that in addition to the other arguments that I have already made, we would move for judgment of acquittal with regard to all counts but specifically with regard to the fourth degree sexual offense.

The court denied defense counsel's renewal motion "as to each and every count."

On April 24, 2018, the jury convicted Mr. Coronado of sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of a minor. He was acquitted of second-degree assault. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Coronado argues that the evidence was insufficient to convict him of sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of a minor. He focuses primarily on what he characterizes as the lack of evidence to establish sexual contact, an element necessary to sustain the convictions of sexual offense

in the third and fourth degree.[3] He argues as well that if there is insufficient evidence to convict him of sexual offense in the third and fourth degree, he necessarily cannot be convicted of sexual abuse of a minor because to be convicted of sexual abuse of a minor, a defendant must first be convicted of a sexual offense.[4] Md. Code (2002, 2021 Repl. Vol.), § 3-602 of the Criminal Law Article ("CR").

Sexual contact, an element of both sexual offense in the third and fourth degree, is "an 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." CR § 3-301(e)(1). Mr. Coronado argues that the State failed to prove that he touched R for the purpose of sexual arousal or gratification. The State responds that Mr. Coronado's argument is not preserved for appellate review because he failed to argue the sexual contact element specifically at trial. The State argues further that even if we find Mr. Coronado's sufficiency argument

[3] *See* Md. Code (2002, 2021 Repl. Vol.), § 3-307(a)(3) of the Criminal Law Article, which states in relevant part 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[.]" *See also* CR § 3-308. This section addresses three prohibited acts that would constitute sexual offense in the fourth degree. The prohibited act relevant to Mr. Coronado's case is that "[a] person may not engage in sexual contact with another without the consent of the other[.]" CR § 3-308(b)(1).

[4] *See* CR § 3-602(b)(2), stating that "[a] household member or family member may not cause sexual abuse to a minor." *See also* CR § 3-602(a)(4)(ii) which addresses acts that constitute sexual abuse:

1. incest;
2. rape;
3. sexual offense in any degree; and
4. unnatural or perverted sexual practices.

preserved, the evidence was sufficient to support his convictions.

A. Mr. Coronado's Argument Is Preserved For Appellate Review.

Before addressing the merits, we must *first* address if Mr. Coronado's argument is preserved for appellate review, which requires us to examine the arguments he made in his motions for judgment of acquittal. Under Maryland Rule 4-324(a), "[a] defendant may move for judgment of acquittal on one or more counts . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence." If the initial motion is denied, the motion for acquittal must be renewed at the close of all evidence, or the sufficiency of evidence may not be reviewed on appeal. *Dziekonski v. State*, 127 Md. App. 191, 207–08 (1999).

"[A] criminal defendant who moves for judgment of acquittal must state with particularity all reasons why the motion should be granted and is not entitled to appellate review of reasons stated for the first time on appeal." *Peters v. State*, 224 Md. App. 306, 353 (2015) (cleaned up). If a defendant states merely that there is insufficient evidence supporting a conviction, but fails to specify the deficiency, the sufficiency argument is not preserved for appellate review. Md. Rule 4-324(a); *Mulley v. State*, 228 Md. App. 364, 387–88 (2016). But if the deficiency is specified and the claim is preserved, we assess the sufficiency of evidence. When reviewing the sufficiency of evidence, we evaluate "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." *Roes v. State* 236 Md. App. 569, 582 (2018) (cleaned up).

The State contends that Mr. Coronado did not argue in his motions "that there was insufficient evidence 'to establish sexual contact—*i.e.*, a touching of the genital area with the intent to do so for sexual arousal or gratification.'" The State argues that although the trial court volunteered the sexual arousal and gratification element during counsel's renewal motion, the argument is not preserved because counsel did not contest the trial court's instruction. As such, the State says, defense counsel did not raise this argument at trial expressly, and the trial court therefore never ruled on it.

We disagree. Defense counsel moved for judgment of acquittal at the close of the State's evidence and renewed that motion at the close of all the evidence at trial. During the initial motion for judgment of acquittal, defense counsel argued "that none of the elements of third degree sex offense have been proven in this case[.]" Defense counsel specified that the evidence was deficient as to every element included in the offense, one of which is sexual contact. We find the argument against the sexual offense in the third-degree conviction preserved on appeal.

Although it's true that the trial court volunteered the sexual arousal and gratification component during defense counsel's discussion of the fourth-degree charge, counsel then stated "[t]he only testimony that we have is that there was touching, an objection and then it stopped." When counsel stated that the testimony presented by the State only demonstrated that the victim was touched, they conceded that the first element of sexual contact, the intentional touching of an intimate area, was met. The only remaining element needed to meet the definition of sexual contact was that the touching was done for purposes

of sexual arousal and gratification. So this is not, as the State asserts, the first time Mr. Coronado raised that argument. By asserting that the State's testimony only proved an intentional touching, defense counsel argued that the State's evidence was deficient as to the sexual arousal and gratification component of sexual contact.

With regard to the sexual abuse of a minor charge, defense counsel declared in their initial motion that because there was insufficient evidence to convict Mr. Coronado of sexual offense in the third and fourth degree, he could not be convicted of sexual abuse of a minor. The sexual abuse of a minor offense requires that a defendant cause sexual abuse to a minor. The term "sexual abuse" includes a conviction of a sexual offense in any degree. CR § 3-602(b)(2); CR § 3-602(a)(4)(ii).

Although the deficiencies pertaining to sexual offense in the third degree and sexual abuse of a minor were raised in the initial motion whereas the deficiency regarding sexual offense in the fourth degree was not, Mr. Coronado's deficiency arguments as to each offense are preserved nevertheless. In *Warfield v. State*, the Court of Appeals held that unless explicitly required by a trial judge, a party can simply state in their secondary motion that they are renewing their argument on the same grounds as before to preserve it for appellate review:

> When a party makes anew a motion for judgment at the conclusion of all the evidence and states that the motion is based upon the same reasons given at the time the original motion was made, or when a party "renews" a motion for judgment and thereby implicitly incorporates by reference the reasons previously given, the reasons supporting the motion are before the trial judge. If, for any reason, the judge desires that the reasons be restated, the judge may simply say so, and

> the moving party must then state the reasons with particularity. If the judge does not wish the reasons restated, he or she may proceed to decide the motion on the grounds previously advanced.

315 Md. 474, 487–88 (1989).

In this case, the defense renewed their motion on the same grounds as before, and then supplemented their argument on the fourth-degree offense. The new motion included and was based on the exact reasons stated in their initial motion. Defense counsel did not need to restate the reasons with particularity because the trial judge here did not ask them to do so. Therefore, under *Warfield*, Mr. Coronado's renewal motion encompassed all deficiency arguments made as to each offense and those grounds are preserved for appellate review.

The State also asserts that because defense counsel never stated expressly that the sexual arousal and gratification element was not met, the trial court never ruled on it. The State compares this case to *Starr v. State*, 405 Md. 293 (2008). In *Starr*, Mr. Starr argued at trial that a sawed-off shotgun was not a dangerous weapon because a shotgun was not listed as a dangerous weapon in the statute. *Id.* at 300. On appeal, though, he argued that the shotgun was not a dangerous weapon because it was a handgun, which was expressly excluded from the list of deadly weapons named in the statute. *Id.* Defense counsel also conceded during *voir dire* that the shotgun at issue was not a handgun. *Id.* The Court of Appeals held that the argument was not preserved for appellate review because "trial counsel never argued to the circuit court that the 'sawed-off shotgun' described by the State's witnesses was actually a 'handgun' as that term [was] defined" in the Criminal Law

Article. *Id.* at 301. The Court explained that the trial court was not required to "imagine all reasonable offshoots" of an argument presented when ruling on a motion for a judgment of acquittal. *Id.* at 304.

Here, defense counsel did not try to require the trial court to "imagine all reasonable offshoots" of the argument made at trial. *Id.* Instead, defense counsel reargued that R's testimony showed only that she was touched by Mr. Coronado, and not that he touched her for purposes of sexual arousal and gratification. Unlike in *Starr*, the trial court here ruled sufficiently on that argument when it clarified that Mr. Coronado's motion argued against the sexual arousal and gratification element of sexual contact, before the court denied the motion on all counts. Additionally, and in contrast to *Starr*, defense counsel did not concede that Mr. Coronado's actions were done for sexual arousal and gratification, as he argues here. For all of these reasons, we find Mr. Coronado's sufficiency claim preserved for appellate review.

B. The Evidence Is Sufficient To Support Mr. Coronado's Convictions.

On the merits, Mr. Coronado contends that the State failed to present evidence at trial sufficient to sustain Mr. Coronado's convictions. In assessing this argument, we must *first* clarify the correct standard for the sufficiency of evidence analysis, *then* determine if the evidence is sufficient under the proper standard.

1. The reasonable hypothesis of innocence standard is the incorrect standard.

Mr. Coronado argues that the sufficiency of evidence should be evaluated under the

reasonable hypothesis of innocence standard. The reasonable hypothesis of innocence standard states that "a conviction upon circumstantial evidence *alone* is not to be sustained unless the circumstances are inconsistent with any reasonable hypothesis of innocence." *West v. State*, 312 Md. 197, 211–12 (1988) (emphasis in original); *see also Jones v. State*, 395 Md. 97, 119–20 (2006). Although courts once used this standard when analyzing sufficiency, it applied at a time when circumstantial evidence was considered lesser quality and less convincing than direct evidence. *Ross v. State*, 232 Md. App. 72, 94–95 (2017). This understanding shifted in *Holland v. United States*, when the Supreme Court rejected the notion that circumstantial evidence should be evaluated differently than direct evidence. 348 U.S. 121, 140–41 (1954). "[T]he better rule," the Court stated, "is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect." *Id.* at 139–40 (citations omitted). Circumstantial and direct evidence have the same value because "'in either case the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused.'" *Ross*, 232 Md. App. at 95 (*quoting Nichols v. State*, 5 Md. App. 340, 350 (1968)).

The reasonable hypothesis of innocence test laid out in *West* was later narrowed in *Wilson v. State*, 319 Md. 530 (1990). In that case, Mr. Wilson was convicted of stealing over $300 worth of jewelry from a house he cleaned. *Id.* at 532. At trial, the State only produced circumstantial evidence that Mr. Wilson was present at the residence on the day of the theft, that he cleaned the upstairs of the residence, and that he was able to access the area where the stolen items were last seen. *Id.* at 537. Several other people who had access

to the area also had been present at the residence that day. *Id.* at 537–38. The Court of Appeals held that because there was only a single strand of circumstantial evidence that Mr. Wilson was present at the scene of the crime, the evidence was insufficient to sustain his conviction. *Id.* at 538–39.

But as the State points out in its brief, the Court of Appeals rejected the *Wilson* test in *Smith v. State*, 415 Md. 174 (2010). In that case, the Court of Appeals held that the proper standard of review was one set forth by the Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979), that "the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . 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." *Id.* at 184 (emphasis in original) (cleaned up). This standard applies in all criminal cases, whether the conviction is based on direct evidence, circumstantial evidence, or a combination of both. *Id.* at 185–86. And we reiterated the point in *Ross*:

> In *Smith v. State*, the Court of Appeals . . . effectively laid to rest the ghost of *West v. State* and its outmoded view of the inferior status of circumstantial evidence. It even laid to rest that small kernel of vitality that *Wilson* had sought to preserve in *West*.
>
> The message of *Smith* is clear. Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively that of the fact-finding jury and not that of a court assessing the legal sufficiency of the evidence. The State is not required to negate the inference of innocence. It is enough that the jury must be persuaded to draw

the inference of guilt.

Ross, 232 Md. App. at 98–99 (cleaned up).

When reviewing the sufficiency of evidence, then, we evaluate "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." *Roes*, 236 Md. App. at 582 (cleaned up). We defer to the fact-finder's ability to decide whether a witness is credible, weigh the evidence, and settle evidentiary disputes. *Neal v. State*, 191 Md. App. 297, 314–15 (2010).

We also do not determine if the evidence presented at trial was established beyond a reasonable doubt. *McCauley v. State*, 245 Md. App. 562, 571–72 (2020). Instead, we decide if there was enough evidence presented for a jury to reach that conclusion. *Id.* "The limited question before us, therefore, is not whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded any rational fact finder." *Olson v. State*, 208 Md. App. 309, 329 (2012) (emphasis in original) (cleaned up). Nor do we question conclusions drawn by the triers of fact in the face of competing rational inferences. *Roes*, 236 Md. App. at 583–84. Instead, "[w]e 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, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *State v. Mayers*, 417 Md. 449, 466 (2010) (cleaned up). It is the finder of fact's role, not ours, to choose from among the various inferences that arise from the facts of the case. *Smith*, 415 Md. at 183–84.

2. Under the correct standard, the evidence is sufficient to sustain Mr. Coronado's convictions.

In looking at "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," we follow a two-prong test. *Roes*, 236 Md. App. at 582 (cleaned up). We evaluate *first* "the 'essential elements' of the crime," and *second* "whether the State has met its burden of production." *Id.* at 583. When determining whether the State met its burden of production, we quantify the evidence admitted at trial and decide whether it was legally sufficient to support a guilty verdict. *Id.*

Under the *first* prong, the elements of sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of a minor were met. The State proved that Mr. Coronado engaged in sexual contact—"an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification . . . ."—with R. CR § 3-301(e)(1). Sexual contact is an element of sexual offense in both the third and fourth degree. To convict Mr. Coronado of sexual abuse of a minor, he must be convicted of a sexual offense. So because the State presented ample evidence to support both sexual offense convictions, it also provided enough evidence to support his sexual abuse of a minor conviction. Additionally, under the *second* prong, the State met its burden of production for each offense.

a. Sexual offense in the third degree, sexual offense in the fourth degree, and sexual abuse of a minor

Under the statutory definition of sexual offense in the third degree, a person may

not engage in sexual contact with another if the victim is under the age of fourteen years, and the person performing the sexual contact is at least four years older than the victim. CR § 3-307(a)(3). Similarly, under the statutory definition of sexual offense in the fourth degree, a person may not engage in sexual contact with another without the consent of the other. CR § 3-308 (b)(1). Both statutes require sexual contact, *i.e.*, "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification . . . ." CR § 3-301(e)(1).

Mr. Coronado argues that there is insufficient evidence that he touched R for purposes of sexual arousal or gratification. In *Bible v. State*, the Court of Appeals explained that juries can assess the defendant's sexual arousal or gratification from the circumstances under which the touching occurs:

> Evidence sufficient to support a finding that a touching was done with the purpose of sexual arousal or gratification may be deduced from the circumstances surrounding the touching, or from the character of the touching itself. Circumstances surrounding the touching that would aid in the determination of whether it was for the purposes of sexual gratification might include whether the defendant and victim were strangers or knew each other; whether either party was undressed; whether anything was spoken between them; whether the touching occurred in public or in a secluded area; whether the defendant displayed any signs of sexual arousal; or whether the defendant behaved in nervous or guilty manner when another person came upon the scene. With respect to the touching itself, the force of the touching, the motion, . . . the duration, and the frequency are all important.

411 Md. 138, 158–59 (2009).

Mr. Coronado analogizes the facts of his case to the facts in *Bible*. Mr. Bible was accused of touching a young girl's buttocks two times in a store. *Id.* at 159–60. The young

girl's testimony was the only evidence describing the touching. *Id.* at 145. She could not testify to what Mr. Bible was doing behind her in the store, only that he touched her on top of her shorts twice. *Id.* at 159. She also could not articulate the character of the touching or where Mr. Bible touched her. *Id.* at 159–60. Mr. Bible didn't make any statements or exhibit any other conduct suggesting a sexual interest in her. *Id.* The trial court nevertheless found Mr. Bible guilty of sexual offense in the third degree, sexual offense in the fourth degree, and assault in the second degree. *Id.* at 147. We affirmed, "holding 'that there was sufficient evidence presented which could have persuaded a rational trier of fact beyond a reasonable doubt that the [Bible]'s touching of the victim was intentional, was in an intimate area, and was for no purpose other than his arousal or gratification.'" *Id.* at 148. We reached our conclusion based on the facts that Mr. Bible touched the young girl on her buttocks more than once, that the touch was not merely a pat, that the young girl called Mr. Bible "'a pervert,'" and that Mr. Bible originally lied to police about being in the store on the day of the incident. *Id.* The Court of Appeals reversed our decision. The Court held that the young girl's statement that Mr. Bible for "'like two seconds' twice" and that he was a pervert did not speak to the "circumstances of the incident." *Id.* at 159. Therefore, "without some other evidence that the touching was for the purpose of sexual gratification or arousal, the proof was legally insufficient to sustain [Mr. Bible's] conviction for sexual offenses in the third and fourth degrees." *Id.* at 160.

Mr. Coronado argues that like the young girl in *Bible*, R could not remember or articulate the character or area in which the touching occurred. And it's true that R could

not testify as to where exactly Mr. Coronado touched her. But there was evidence beyond R's own testimony that illustrated the character of the touching and satisfied some of the *Bible* factors for sexual arousal and gratification. Unlike in *Bible*, there were other witnesses present during the incident. R's brother, G, testified that Mr. Coronado touched R on the "[w]iener." In addition, Mr. Coronado and R were not strangers—they were family members who lived together. Mr. Coronado did not touch R while in a public space, but in the more private, secluded area of the family bedroom. Both R and G testified that R was clothed during the incident, whereas Mr. Coronado was undressed when he touched her.

In *Bible*, the young girl also could not describe the force, motion, or duration of the touching. *Id.* at 159–60. Conversely, Detective Reio testified that R told her that it hurt when Mr. Coronado touched her. Although it is possible that the touching in *Bible* was inadvertent because no words or conduct suggested otherwise, that is not the case here. Mr. Coronado scooted over to where R was lying to touch her, and did so only after R's mother had left the room to make him food. This conduct suggests that the touching was intentional. We hold that the State presented evidence sufficient for a jury to conclude that Mr. Coronado's actions were done for the purpose of sexual arousal and gratification. A jury could conclude on this record that this element was satisfied and that Mr. Coronado was guilty of sexual offense in the third degree and sexual offense in the fourth degree.

Mr. Coronado also argues that to sustain his conviction for sexual abuse of a minor, he must be convicted of at least one sexual offense. To convict Mr. Coronado of sexual

offense in the third and fourth degree, sexual contact—"an 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"—must be proven. CR § 3-301(e)(1). Again, Mr. Coronado conceded at trial that the touching was intentional, and the State presented evidence to satisfy the sexual arousal or gratification component of the sexual contact definition under the *Bible* factors. The State offered evidence sufficient to support the jury's finding of sexual contact.

b. Burden of production

We *next* analyze whether the State met its burden of production. In a jury trial, a motion for a judgment of acquittal at the conclusion of the case initiates the analysis of whether the State satisfied its burden of production. *Chisum v. State,* 227 Md. App. 118, 130–31 (2016). If the burden was not met, a trial court errs as a matter of law if it denies the motion for judgment of acquittal and sends the case to the jury. *Id.*

"The appellate assessment of the burden of production is made by measuring the evidence that has been admitted into the trial objectively and then determining whether that body of evidence is legally sufficient to permit a verdict of guilty." *McCauley*, 245 Md. App. at 576 (cleaned up). If the evidence is legally sufficient, the burden of production has been met. *Chisum*, 227 Md. App. at 131. As we explained above, the State presented amply sufficient evidence that could support a finding that Mr. Coronado touched R for purposes of sexual arousal and gratification. A rational jury readily could have found Mr. Coronado guilty of sexual offense in the third degree, sexual offense in the fourth degree, and sexual

abuse of a minor on the record in this case, and we affirm his convictions.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1117s18cn.pdf