

Circuit Court for Anne Arundel County
Case No. C-02-CR-21-001325

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1241

September Term, 2022

HECTOR ROJO

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 2023

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

Convicted by a jury in the Circuit Court for Anne Arundel County of sexual abuse of a minor, two counts of second degree rape, three counts of third degree sexual offense, and related offenses, Hector Rojo, appellant, presents for our review a single issue: whether the evidence is insufficient to sustain the convictions. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called A., who at the time was twelve years old. A. testified that when she was seven years old, Mr. Rojo, who was the boyfriend of A.'s aunt, moved into the Crofton home that A. shared with her parents, three younger sisters, and aunt. When A. would come home from school, A.'s aunt and Mr. Rojo would normally be home, but if A.'s aunt "went to school," Mr. Rojo would be the only adult present. A. would normally try to "take a nap" with her sisters, but if she "couldn't sleep," she "would go into [her] aunt's room and read." While A. would be reading, Mr. Rojo "would ask if [she] wanted to play a game." The "game was where you would have to ask what was in your mouth." On some occasions, "it would be, like, a popsicle stick[,], a chocolate spoon, or a remote." On other occasions, "[i]t was this cylinder like thing and it had this liquid, and it would squirt out." The "cylinder like" object "felt kind of squishy and the liquid tasted absolutely disgusting," like "vomit." A. was not "able to see" the things in her mouth, because Mr. Rojo put a blindfold, "like[] a sleeping mask or . . . pillow cover," on her. "When the cylinder like thing was in [A.'s] mouth," Mr. Rojo would say, "nice and slowly," the object "would move back and forth," and Mr. Rojo "would put his hand on the back of [A.'s] head and go forward and back." Afterward, A. would go into "the bathroom across the hall," "spit it out," and "rinse[her] mouth out with water." Mr. Rojo would then "give [A.]

a piece of candy and . . . say that it was [their] little secret.” The “game” would occur “[a]lmost twice a week.”

When A. was nine years old, she, her family, and Mr. Rojo moved to a residence near Old Mill Middle School. The “game” continued to occur “at the second house.” A. told her parents about the “game” after an incident where Mr. Rojo hurt one of A.’s sisters by “grabb[ing] her forearm” and causing “bruises on her arm and her back.” Mr. Rojo subsequently “moved out.” At the time of the incident, A. was ten years old. When asked whether “there [was] any other time where [Mr. Rojo] made [A.] do something that made [her] uncomfortable,” A. stated that Mr. Rojo “would sometimes slide his hand from . . . the middle of [A.’s] back” to “right above [her] behind.” A. also stated that “[s]ometimes [Mr. Rojo] would hug [her] from the back and touch [her] chest.” On other occasions, A. “would be doing [her] homework,” when Mr. Rojo “would place [A.’s] hand on his lower private part – his penis, and keep it there.”

During cross-examination, A. reiterated that Mr. Rojo “lived with [her] for three years.” A. also reiterated that the “game” occurred “[t]wice a week” while she was living in the Crofton residence, and stated that it occurred “once a week” after she moved to the residence near Old Mill Middle School. A. also stated that she was “forced to touch [Mr. Rojo’s] penis” on two occasions.

The State also called Noreen Startt, a former social worker for the Anne Arundel County Department of Social Services. Ms. Startt testified that on October 28, 2020, and August 13, 2021, she conducted interviews of A., which were recorded on video, and portions of which were admitted into evidence. During the first interview, A. stated, in

pertinent part, that “the last time . . . that [Mr. Rojo] grabbed [her] butt” was “in August.” During the second interview, A. stated, in pertinent part, that “the first time that [the ‘game’] happened” was when she was nine years old and living in Crofton. A. further stated that the “game” occurred another five to eight times after she moved to her new residence, and that “the last time that it happened” was “two weeks before Labor Day.”

Mr. Rojo contends that, for two reasons, the “evidence is insufficient to sustain the convictions.” Mr. Rojo first contends that the State failed “to prove that [he] was the person who committed the charged offenses.” During A.’s testimony, the following colloquy occurred:

[PROSECUTOR: A.], I’d just ask that you take a really careful look around the courtroom today and tell me if you see [Mr. Rojo].

[A.:] Yes.

[PROSECUTOR:] Can you tell me something that he’s wearing?

[A.:] He’s wearing black glasses.

[DEFENSE COUNSEL]: May we approach?

THE COURT: You may.

(Counsel approached the bench and the following occurred:)

[DEFENSE COUNSEL]: Obviously, for the record, he’s not wearing black glasses.

THE COURT: Yeah.

[DEFENSE COUNSEL]: She has not identified him.

* * *

[PROSECUTOR]: I'll – I'll elicit through others who – I mean, if they can identify [Mr. Rojo] in the courtroom[.]

* * *

[DEFENSE COUNSEL]: Yeah, I just want to make sure the record is clear.

THE COURT: Yeah, the record is clear that the defendant is not wearing black glasses and there is an individual in the back of the courtroom wearing black glasses. And, you know, [the prosecutor] will have to do whatever she thinks she needs to do in – in the organic nature of every trial to – to prove identity.

[DEFENSE COUNSEL]: And also, for the record, he did remove the mask as requested.

THE COURT: Correct.

* * *

The one thing that I – I'm not sure was intentional – I'm not suggesting that, but I did find frustrating is that your client kept his countenance completely down. So, even me, all I could see was the top of his head. So, I don't – I don't know that we can do it a third time, but he never – I mean, if you take a look at his countenance right now, it's face down and that's the angle that she also was looking at. So, I will say that also.

Following A.'s testimony, the prosecutor asked "that for the remaining" State's witnesses, "at the beginning of each direct, [Mr. Rojo's] mask be removed before they enter the courtroom." The court replied:

Yes. I – you know, . . . I think I assume wrongly, because of the – the nature of the limited information I have with the allegations that – that ID or in court IDs would not be an issue. But, of course, every case obviously presents unexpected things; I'll just characterize it as that.

But, Mr. Rojo, you have an obligation . . . as I said earlier, at the start of the trial, I'm making sure both sides get a fair trial. And I think, actually, in hindsight, it would have been appropriate for me to ask you to hold your head up. I don't know if you did so intentionally or not, but when the in court

ID process was happening both times, you had your head fully in that legal pad. And I, including the witness, was staring at the top of your head.

So, going forward, . . . if you're being asked for an ID process, and I know you know what that means -- I don't have to explain it to you, but if you have any questions, I'm going to encourage you, during the break, to talk to your two attorneys about that. But you need to keep your head up, focused forward, and the mask off for that period, and then you can go back to doing whatever you want during that period. Because that has its unique place and purpose in a trial, but you cannot maintain this position the entire time. I'm not saying you did so intentionally, but I think in the abundance of caution to make sure both sides have a fair trial, you have an obligation to following my instruction in that regard.

Mr. Rojo replied that he understood.

The State subsequently called A.'s sister B., who was ten years old at the time of trial. B. testified that Mr. Rojo was her aunt's boyfriend, and that Mr. Rojo wears glasses. The State also called A.'s mother, who identified Mr. Rojo and testified that he "move[d] in with" A.'s family because "[h]e was dating" her husband's sister. A.'s mother testified that although Mr. Rojo was "clean shaven" at trial, he previously "had longer hair" and a "raspy beard," and wears "[b]lack plastic frame[d]" glasses. The State also called A.'s father and aunt, both of whom testified that A.'s aunt had been Mr. Rojo's girlfriend.

Mr. Rojo contends that because A. "failed to identify [him] in court as the person who committed the alleged offenses," and "[t]here was no suggestion that [A.'s family members] had witnessed the alleged abuse," the State failed "to prove that Mr. Rojo was the person who committed the charged offenses." But, Mr. Rojo does not cite any authority that required A. to identify him in court as the person who committed the offenses. A. repeatedly testified that the person who committed the offenses was the boyfriend of A.'s aunt, and the State called three other witnesses who identified him as such. Also, A.'s

mother testified that Mr. Rojo had changed his appearance, and the testimony of A.'s mother and sister that Mr. Rojo wears glasses explained A.'s identification of a person wearing glasses as Mr. Rojo. Finally, the court's comments regarding Mr. Rojo's behavior during the "in court ID process" permit a reasonable inference that Mr. Rojo was attempting to hide his face from A., and that this behavior may have affected A.'s ability to identify Mr. Rojo as her assailant. In light of these circumstances, we conclude that A.'s failure to identify Mr. Rojo does not render the evidence insufficient to convict.

Mr. Rojo next contends that the State "failed to establish a specific time frame [for] when the conduct might have occurred." But, Mr. Rojo does not cite any authority that required the State to establish such a time frame. On the contrary, the Supreme Court of Maryland has "emphasized . . . that requiring specificity in dates in a child abuse case would be unreasonable," because "[t]he ability of a child to definitely state the date or dates of the offenses or to narrow the time frame of such occurrences may be seriously hampered by a lack of memory." *Crispino v. State*, 417 Md. 31, 53 (2010) (internal citation omitted). Here, A., who at the time of trial was twelve years old, testified that numerous incidents of fellatio and other sexual acts began when she was seven years old and living in Crofton, continued after she and her family moved to the residence near Old Mill Middle School, and stopped when she was ten years old. Also, A.'s testimony was corroborated by the statements that she made to Ms. Startt during their recorded interviews. This evidence was

sufficient to establish when the offenses occurred, and hence, the evidence is sufficient to sustain the convictions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**