Circuit Court for Prince George's County
Case Nos. CT220228X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1716

September Term, 2024

ABDEL D.

v.

STATE OF MARYLAND

Graeff,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 14, 2026

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

Convicted by a jury in the Circuit Court for Prince George's County of sexual abuse of a minor by a household member and second degree assault, Abdel D., appellant, presents for our review two issues: whether the court erred in allowing the State to amend a count of the indictment, and whether the evidence is insufficient to sustain the conviction of sexual abuse of a minor. For the reasons that follow, we shall reverse the conviction of sexual abuse of a minor by a household member. We shall also vacate the sentence for second degree assault and remand the case for resentencing.

Appellant was initially charged by indictment with engaging in a continuing course of conduct against a child and related offenses. Count 2 of the indictment charged appellant with "caus[ing] sexual abuse to [A.], a minor, [appellant] being a family member of" A., in violation of Md. Code (2002, 2021 Repl. Vol.), § 3-602(b)(2) of the Criminal Law Article ("CR") (a "household member or family member may not cause sexual abuse to a minor"). At trial, the State called A., who at the time was fifteen years old. A. testified that when she was approximately eight years old, her mother "broke up" with A.'s father and "started living with" appellant. In "2020 and 2021," A. would "visit [her] mother occasionally." "During New Year's," A. "was playing with [her] siblings," when appellant "came into the room[,] locked the door," and "came on top of" A. Appellant "got closer to [A.'s] face," and she "felt something poking" her "[b]y the area [where she] pee[s]." A. testified that the thing that "was poking" her was "the place where [appellant] pees." A. knew "that it was the place where [appellant] pees" because she "saw it" when appellant "took it out." Appellant "made [A.] touch it" with her hand, and "told [her] not to tell anyone." On another occasion, A. was "about to go to bed" on the floor of the living room

when she "felt . . . someone behind" her. A. then "felt . . . something . . . sticking at" her by her "butt." After "a minute or two," A. "turn[ed her] head to see . . . who it was," and saw appellant. At the time of the incident, A. was "[l]ike 12 or 11." On a third occasion, appellant and A. were "in a car" outside a laundromat, when appellant kissed A. "[o]n the lips."

Following the close of the State's case, defense counsel moved for judgment of acquittal as to Count 2 on the grounds that there was "no suggestion that [appellant] was a relative at the time of this incident by either blood or adoption," and "no evidence that [appellant] was married to [A.'s] mother at the time these incidents took place." In response, the prosecutor moved "to amend Count 2 to household member from family member because . . . that does not change the substance of the offense." Defense counsel objected to the amendment on the ground that "to change the legal theory under which [appellant was] charged is a substantive change and would require the consent of the defense." The court granted the motion and subsequently instructed the jury as to "[c]hild sexual abuse . . . caused by a household member."

Following deliberations, the jury convicted appellant of the aforementioned offenses. The court subsequently imposed a term of imprisonment of 25 years, all but nine years suspended, for the sexual abuse of a minor by a household member. For the second degree assault, the court imposed a consecutive term of imprisonment of ten years, all but six months suspended.

Appellant contends that the court erred in amending the offense, "because it alleged an alternate circumstance . . . which differed from the circumstance under which he was

charged." The State, citing *Tapscott v. State*, 106 Md. App. 109 (1995), concurs. We agree with the parties. In *Tapscott*, the "indictment charged that [Mr. Tapscott], 'having responsibility for supervision of [K.C.] . . . did cause abuse to said minor child, in violation of Md.Ann.Code, art. 27, § 35 A (1992 Repl.Vol.).'" *Tapscott*, 106 Md. App. at 133. On appeal, Mr. Tapscott contended "that the trial judge improperly amended the indictment when he instructed the jury that they could convict [Mr. Tapscott] of Counts I and II (child abuse) if they found [Mr. Tapscott] to be a person who had 'permanent or temporary care or custody of a child[,'] when the indictment charged [him] with only being a person having 'responsibility for the supervision' of the child." *Id.* (footnote omitted). Mr. Tapscott also challenged the verdict sheet, which "permitted the jury to find [Mr. Tapscott] guilty of child abuse if they found that [Mr. Tapscott] had permanent or temporary care or custody *or* responsibility for the supervision of the child." *Id.* at 134 (emphasis in original). We concluded that "[w]hen the State delineated the particular section of the statute, . . . it charged only the conduct and circumstances proscribed by that section, and, absent [Mr. Tapscott's] consent, was barred from later amending the indictment to charge different circumstances." *Id.* at 135 (citation omitted). "The jury instruction and verdict sheet which altered the crime alleged to have been committed violated [Mr. Tapscott's] constitutional right to be informed of the accusation against him in time to prepare his defense," *id.* at 136, and accordingly, we vacated Mr. Tapscott's convictions of child abuse. *Id.* at 144.

We reach a similar conclusion here. When appellant was charged by indictment with causing sexual abuse to A. as a "family member," the indictment charged only the conduct and circumstances proscribed by that section of CR § 3-602(b)(2). Absent

appellant's consent, the State was barred from amending the indictment to charge different circumstances. The court's granting of the State's motion to amend the indictment violated appellant's constitutional right to be informed of the accusation against him in time to prepare his defense, and hence, we reverse his conviction of sexual abuse of a minor by a household member.

The State requests that in addition to reversing the conviction of sexual abuse of a minor by a household member, we also vacate the sentence for second degree assault and remand for resentencing. We shall do so. The Supreme Court of Maryland has recognized that "[t]he majority of our sister state appellate courts . . . view sentencing as a package," *Twigg v. State*, 447 Md. 1, 28 (2016) (citation omitted), and "after an appellate court unwraps the package and removes one or more charges from its confines, the sentencing judge, herself, is in the best position to assess the effect of the withdrawal and to redefine the package's size and shape[.]" *Id.* (internal citation, quotations, and brackets omitted). Accordingly, we remand the case to the circuit court for resentencing for the conviction of second degree assault.[1]

CONVICTION OF SEXUAL ABUSE OF A MINOR BY A HOUSEHOLD MEMBER REVERSED. SENTENCE FOR SECOND DEGREE ASSAULT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

[1]Because we reverse the conviction of sexual abuse of a minor by a household member on a ground other than the sufficiency of the evidence, we need not address appellant's second contention.