

Circuit Court for Baltimore County
Case No: 03-K-14-006299

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1734

September Term, 2019

ROBERT CLIFFORD WEDDINGTON

v.

STATE OF MARYLAND

Fader, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 4, 2021

*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.

Following a bench trial in the Circuit Court for Baltimore County, Robert Clifford Weddington, appellant, was convicted of sexual abuse of a minor¹ and three counts of second degree rape.² On appeal, Mr. Weddington contends that the trial court erred in permitting the State to amend the charging document after the close of its case-in-chief. Mr. Weddington further contends that the evidence adduced at trial was legally insufficient to support his convictions.

For the following reasons, we shall affirm.

DISCUSSION

AMENDMENT OF THE CHARGING DOCUMENT

At the close of the State's case-in-chief, Mr. Weddington moved for a judgment of acquittal, contending that the State had failed to make a prima facie showing that the alleged sexual abuse occurred during the period of time set forth in the charging document. In response, the State moved and was permitted to amend the dates in the charging document pursuant to Maryland Rule 4-204, which states:

On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required. If amendment of a charging document reasonably so requires, the court shall grant the defendant an extension of time or continuance.

By Rule, therefore, Maryland courts may amend a charging document prior to the rendering of a verdict, subject to the limitation that the parties must consent to the

¹ Md. Code Ann., Crim. Law § 3-602.

² Md. Code Ann., Crim. Law § 3-304.

amendment where it would change the character of a charged offense. This limitation was established “to prevent any unfair surprise to the defendant and his counsel.” *Counts v. State*, 444 Md. 52, 57 (2015).

Here, the record reflects that the offenses set forth in the charging document, including sexual abuse of a minor and second degree rape, occurred between January 20, 2011 and January 19, 2012. These dates coincided, for the most part, with the period of time within which the victim, D.H., would have been 12 years of age. The record reflects that these dates were included in the original charging document based on D.H.’s statements, made during an interview with a DSS social worker when she was 15 years of age, that the three alleged incidents of abuse occurred when she was 12 years old. The evidence introduced during the State’s case-in-chief, however, suggested that the alleged abuse may have occurred the following year, in 2012, outside the range of dates provided in the charging document. The trial court, therefore, permitted the State to amend the dates of the indictment to include a period spanning from January 11, 2011 to January 20, 2013.

Mr. Weddington contends that due to the amendment of the charging document, the “defense strategy was significantly prejudiced” because the defense strategy was “built around establishing that the events alleged could not have happened during the alleged time period [in the original charging document].” Moreover, at trial, Mr. Weddington argued that an amendment to include the year of 2012 would be improper because the defense “had prepared long and hard to address the...allegations that these events occurred in [] October of 2011.” In his closing argument, for instance, Mr. Weddington highlighted D.H.’s testimony in which she stated that two alleged incidents of abuse occurred in the

trailer of a U.S. Express truck, a vehicle operated by Mr. Weddington in the course of his employment. The evidence indicated, however, that Mr. Weddington had stopped working for U.S. Express in 2010 due to a workplace injury, that he did not own any truck and did not work in 2011 due to his injury, and that when he resumed driving trucks for work in 2012, he no longer drove for U.S. Express. The defense argued that these facts, among others, tended to show that the abuse could not have occurred in 2011 as alleged. Further, Mr. Weddington cites *Burkett v. State*, 5 Md. App. 211, (1968), for the proposition that the date of the charging document cannot be amended where the defendant “could have been misled when at trial they were required to defend themselves for the same charges but on a different date.”

We are not persuaded, however, that the amendment of the dates altered the character of the charges faced by Mr. Weddington, nor are we persuaded that the amendment prejudiced his defense. Though Mr. Weddington did not consent to the proposed amendment to alter the dates set forth in the charging document, we have previously expressed that “[o]rdinarily, an amendment altering the date of the offense does not change the character of the offense for purposes of Maryland Rule 4-204, and therefore is permissible without the defendant’s consent.” *Thompson v. State*, 181 Md. App. 74, 99 (2008). Moreover, as the Court of Appeals stated in *Crispino v. State*, 417 Md. 31, 51-52 (2010):

With respect to a variance from the time period alleged and that adduced at trial, we have stated 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.

Moreover, because Mr. Weddington exhibited an understanding of the attendant circumstances surrounding the alleged offenses during his 2014 interview with the police, we find no merit in his contention that the amendment of the charging document unfairly prejudiced him in any way. In his 2014 interview, though denying the allegations of sexual abuse, Mr. Weddington recalled the circumstances that led him to purchase a pair of tennis shoes that D.H. alleged were purchased in exchange for sex. Additionally, though maintaining his innocence, Mr. Weddington recalled specific circumstances regarding D.H.'s receipt of text messages sent from his cell phone offering \$500 in exchange for sex. His knowledge of these attendant circumstances reflect that, prior to trial, Mr. Weddington had some temporal understanding of when these events occurred in relation to the period of time in which the sexual abuse was said to have occurred.

For the foregoing reasons, we are satisfied that the trial court acted within its discretion in permitting the State to amend the dates of the charging document.

SUFFICIENCY OF THE EVIDENCE

On appeal, Mr. Weddington contends that the evidence presented at trial was legally insufficient to sustain his convictions. As the Court has previously stated:

When reviewing a conviction for sufficiency of the evidence, we ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State. It is not our role to retry the case. Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. The finder of fact has the

ability to choose among differing inferences that might possibly be made from a factual situation.

Hayes v. State, 247 Md. App. 252, 306 (2020) (internal citations and quotations omitted).

Mr. Weddington argues that the “outcome of this case hinged on the trier of fact’s determination of the credibility of each party” and that D.H.’s “testimony was so inherently incredible that it could not be relied upon to support the convictions beyond a reasonable doubt.” In support, Mr. Weddington sets forth six instances in which D.H. offered conflicting testimony, involving: 1) the timing of Mr. Weddington’s purchase of a cell phone in exchange for sex, 2) whether D.H. accompanied Mr. Weddington to purchase tennis shoes, purportedly in exchange for sex, 3) unspecified testimony given during the first trial which conflicted with her testimony at the second trial of this matter, 4) whether D.H. had ever watched pornography before the sexual encounters with Mr. Weddington, 5) whether Mr. Weddington paid her \$500 before or after they engaged in sexual intercourse, and 6) D.H.’s admission that she lied to police in a separate investigation implicating Mr. Weddington.

However, as the State correctly argues, D.H.’s contradictory statements go “only to more peripheral details of chronology and background facts.” Despite her inconsistencies, D.H., through her testimony, maintained her core allegation: that Mr. Weddington, her stepfather and member of her household, engaged in vaginal intercourse with her on three separate occasions while she was under 14 years of age.

Here, the trial court, acting as factfinder, assessed D.H.’s credibility and found that it did “believe” her. We will not usurp the trial court’s credibility determination as it is the

fact-finder’s role “to judge the credibility of the witnesses, measure the weight of the evidence, and draw reasonable inferences from the facts.” *Turner v. State*, 192 Md. App. 45, 81 (2010). Moreover, the trial court’s assignment of guilt was reasonable as it was supported by corroborating evidence. Coupled with D.H.’s testimony, the evidence included particularly “damning” text messages sent from Mr. Weddington to D.H. in which he offered the minor \$500 in exchange for sex.

For the foregoing reasons, we are persuaded that the evidence was sufficient to support Mr. Weddington’s convictions.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
IS AFFIRMED. COSTS TO BE PAID BY
THE APPELLANT.**