Circuit Court for Prince George's County
Case No. CT181160X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1742

September Term, 2019

ERNEST COY GIBBS

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 21, 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.

Convicted by a jury in the Circuit Court for Prince George's County of sexual abuse of a minor, second degree rape, third degree sexual offense, fourth degree sexual offense, and second degree assault, Ernest Coy Gibbs, appellant, presents for our review two questions: whether the court impermissibly restricted defense counsel's cross-examination of two witnesses, and 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 E.L., who at the time was nearly fifteen years old. E.L. testified that in August-September 2016, when she was twelve years old, she lived in Anne Arundel County with her mother J.G., her brother M., and J.G's fiancée F.G.. When F.G. "passed away," J.G. took E.L. and M. to the Prince George's County home of E.L.'s great-uncle, great-aunt, and Mr. Gibbs, who is E.L.'s cousin. E.L. said "hi to everybody, and then" she and M. "went back to [Mr. Gibbs's] room." When M. "went to the living room" to go "to bed," E.L. and Mr. Gibbs "watched Netflix."

E.L. later went to bed "[i]n [Mr. Gibbs's] bed because he told [E.L.] to." E.L. "fell asleep, [but] woke up to being turned over with [her] clothes being taken off." Mr. Gibbs then "put his penis in [E.L.'s] vagina." E.L. testified: "My legs were pulled around his waist, he was over top of me. I remember being terrified and just disgusted." E.L. also remembered Mr. Gibbs masturbating "to the side of" her. The following morning, Mr. Gibbs "told [E.L.] not to tell [her] mother that he was in the same bed as" E.L.. E.L. did not immediately tell J.G. about the offenses "because she had just lost her" fiancée, but approximately two years later, E.L. so informed J.G..

The State also called J.G., who testified that after F.G. passed away, she and her two children spent the night at the home of Mr. Gibbs. J.G. recalled her children being "either in the family room, the living room or hanging out with [Mr. Gibbs] and in his room watching video games, movies and eating pizza." J.G. also recalled her son "coming out at one point to go to bed," but E.L. "hadn't come out yet." The following morning, J.G. asked Mr. Gibbs "where [her] daughter was." Mr. Gibbs replied that "she was in his room, that he didn't want to wake her up because she was just too cute and didn't want to disturb her." Approximately two years later, E.L. had "a conversation with [J.G.] about what happened with" Mr. Gibbs.

The State also called Prince George's County Police Detective John Quarless, who testified that he is "a detective with the Child and Vulnerable Adult Unit." When Detective Quarless "receive[d] this case," his unit arranged for a social worker to conduct a "forensic interview" of E.L.. Following the interview of E.L., the detective interviewed J.G., "executed a search warrant on [Mr. Gibbs's] home," and interviewed Mr. Gibbs. During Detective Quarless's testimony, the State entered into evidence a video recording of the interview of Mr. Gibbs, and played excerpts of the interview for the jury.[1] The detective testified that during the interview, Mr. Gibbs "started giving details similar to what [E.L.] gave in her disclosure," which "indicated that he was aware [of] the day [they] were actually talking about." Later, the following colloquy occurred:

[1]The record does not reflect which excerpts of the interview, which is over five hours long, were played for the jury, nor does the record contain a transcript of the interview.

[PROSECUTOR:] You stated in the video you have to explain why her hymen is not intact. Did you know that to be true at the time?

[DET. QUARLESS:] No.

[PROSECUTOR:] Okay. Are you allowed to tell people you're interviewing things that are not true?

[DET. QUARLESS:] We do deceive in our interviews.

[PROSECUTOR:] And is that allowed?

[DET. QUARLESS:] Yes. In this interview I did it to the point where he said everything but the abuse. So everything that [E.L.] disclosed in her interview matched up based on what he's saying without me putting that out there, so that's why I decided to use that tool.

Mr. Gibbs first contends that the court "impermissibly restricted cross-examination of the prosecution's witnesses" with respect to two "areas of inquiry." First, during defense counsel's cross-examination of E.L., the following colloquy occurred:

[DEFENSE COUNSEL:] Okay. Let me ask you this: When – you had a conversation with your mom, is that right, about what had occurred?

[E.L.:] Brief one.

[DEFENSE COUNSEL:] Okay. And when was that?

[E.L.:] When I first told her.

[DEFENSE COUNSEL:] Okay. And was that over the summer of 2018? That was two years later, correct?

[E.L.:] Yes.

[DEFENSE COUNSEL:] Okay. And that's the first time you made this disclosure, correct?

[E.L.:] Yes.

[DEFENSE COUNSEL:] And during that time you had – your dad had had some visitation with you; is that right?

[E.L.:] Yes.

[DEFENSE COUNSEL:] Okay. And during that time it became a concern because your dad had made a statement concerning your girlfriend at that time; is that right?

[PROSECUTOR]: Objection.

THE COURT: Come on up.

(Counsel approached the bench, and the following ensued.)

THE COURT: What's that about?

[DEFENSE COUNSEL]: Well, in the child support – in the documents that we have, it says that the mom took them there because the dad said to her, "I ought to steal your girlfriend from you," and she got all upset and did not want to go to her dad's place, so they stopped the visitation –

THE COURT: Her father told her that he was going to steal her girlfriend?

[DEFENSE COUNSEL]: Yes. And that made her upset, and she did not want to go to the father's.

THE COURT: Okay. What relevance does that have?

[DEFENSE COUNSEL]: Only as to motive about why she – why all this came up at this time. That's going to be my argument, is that, well, if she doesn't want to go to her dad's, she's trying to make something happen. She says this is what happened, that's not going to get it; now there's a complaint of something that occurred two years ago, and that's why she doesn't want to go to her dad's, because she was supposed to go there for the whole summer.

THE COURT: I'm going to sustain the objection. I'm not sure that even logically that makes sense – her desire not to go to her father's would generate a complaint about her mother's cousin. Even if it were somewhat

> relevant, it's far outweighed by the danger of confusion. Whatever the father said, the motivation, I'm going to sustain the objection.

During defense counsel's cross-examination of J.G., the court sustained objections to the following questions:

- "Do you remember when you had a conversation with the therapist about [E.L.] was going through a difficult period of time – is that right – and part of it was she didn't want to go to her dad's house?"
- "Could you tell us a little bit about the relationship that [E.L.] has with her dad?"
- "Now, . . . in 2018. . . . . Was [E.L.] – did she have friends up in Anne Arundel County, or was she in some type of relationship?"

Second, during his cross-examination of E.L., defense counsel asked: "[W]hat did you tell your therapist[?]" The prosecutor objected, and the court sustained the objection. Later, the following colloquy occurred:

> [DEFENSE COUNSEL:] Now, the first thing that got you to the therapy – I hate to jump back, but you had another experience. Is that what initially got you there regarding –
>
> [PROSECUTOR]: Objection.
>
> (Counsel approached the bench, and the following ensued.)
>
> THE COURT: What's this?
>
> [DEFENSE COUNSEL]: Well, the allegation is she at one time had a sexual experience with another girl at a young age where she said she was abused. So there was another complaint of abuse, and that's how she initially got to the therapist and reported the second part – the second thing with [Mr. Gibbs].
>
> THE COURT: Sustained.

Mr. Gibbs contends that the "court's rulings . . . interfered with his constitutional rights to confront and cross-examine the witnesses testifying against him," because "[b]oth areas of inquiry were relevant to [E.L.'s] credibility." But, evidence is relevant only when

it has a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 5-401. Also, we have recognized that a defendant's "constitutional right to present relevant evidence" is "not absolute," *Westley v. State*, 251 Md. App. 365, 403 (2021), because relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]" Rule 5-403. Here, evidence of an allegedly improper statement by E.L.'s father in the summer of 2018 did not have any tendency to make the existence of any fact of consequence to the determination of whether Mr. Gibbs committed the offenses against E.L. in August 2016 more or less probable than it would be without the evidence, and we agree with the court's conclusion that any relevance of such evidence would be "far outweighed by the danger of confusion." Also, we have recognized "the significant prejudice attendant to introducing evidence of a victim's past sexual abuse, . . . the public policy interest in protecting victims from such trauma," the "additional risk . . . that the jury might . . . unreasonably conclude[] that [a victim] was inherently less credible because she had made multiple allegations of sexual abuse," and the "significant risk of jury confusion inherent from injecting into a sexual abuse trial unrelated allegations of sexual abuse of the same victim by a different perpetrator." *Westley*, 251 Md. App. at 412-13 (citations and footnote omitted). We conclude that these interests justified the exclusion of evidence as to any sexual abuse that E.L. may have suffered in addition to that inflicted by Mr. Gibbs, and hence, the court did not err in restricting defense counsel's cross-examination of E.L. and J.G..

Mr. Gibbs next contends that, for numerous reasons, the evidence is insufficient to sustain the convictions. But, "it is well established in Maryland that the testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153 (2010) (citations omitted). Here, E.L. testified that when she was twelve years old, Mr. Gibbs, who is a member of E.L.'s family and at least four years older than E.L., engaged in vaginal intercourse with her against her will and without her consent. This testimony, if believed and which was subsequently corroborated by Detective Quarless's testimony, could convince a rational trier of fact beyond a reasonable doubt that Mr. Gibbs committed the offenses, and hence, the evidence is sufficient to sustain the convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.