Circuit Court for Baltimore City
Case No. 121168001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1881

September Term, 2023

JOHN NUNEZ

v.

STATE OF MARYLAND

Berger,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: July 21, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Baltimore City, a jury convicted appellant, John Nunez, of four counts of sexual abuse of a minor.

Appellant presents the following questions for review:

"1. Is the evidence insufficient to sustain Appellant's convictions?

2. Did the trial court err by admitting excessive evidence of J.S.'s self-harm?

3. Did the trial court deny Appellant his right to allocution at sentencing?"

We shall affirm the judgments of the circuit court and find no error.

I.

The Grand Jury for Baltimore City indicted appellant on seventy-three counts of sexual abuse of a minor and related offenses in June of 2021. The State *nolle prosse*d sixty-seven of the initial counts and went to trial on the following 6 counts:

> Count 1: Sexual abuse of a minor on or about September 7, 2014 – July 31, 2015;
> Count 2: Sexual abuse of a minor on or about August 1, 2015 – July 31, 2016;
> Count 3: Sexual abuse of a minor on or about August 1, 2016 – July 31, 2017;
> Count 4: Sexual abuse of a minor on or about August 1, 2017 – July 31, 2018;
> Count 5: Sexual abuse of a minor on or about August 1, 2018 – July 31, 2019; and
> Count 6: Sexual abuse of a minor on or about August 1, 2019 – January 31, 2020.

After a trial in August of 2022, the jury could not reach a unanimous verdict, and the court declared a mistrial. At appellant's second trial in June of 2023, a jury convicted appellant of counts 3 through 6 of sexual abuse of a minor and acquitted him of counts 1 and 2.

The court imposed a sentence of twenty-five years' incarceration, with all but eight suspended for count 3, sexual abuse of a minor, and a second consecutive sentence of twenty-five years' incarceration, with all but eight suspended, five years' probation for count 4, sexual abuse of a minor. The court imposed concurrent sentences for the remaining two convictions.

J.S.[1], born in September of 2006, was sixteen years old at the time of trial. She accused appellant of sexual abuse over a period of approximately 4 years, beginning when J.S. was around ten or eleven years-old and ending when she was around fourteen years-old. Appellant is J.S.'s uncle. During this time, J.S. would sometimes stay at her great-grandmother's house along with appellant and J.S.'s aunt when J.S.'s mother needed help. Because J.S.'s mother could not drive, she frequently stayed there five days a week to get help getting to and from school. This continued through approximately 4th grade when "J.S. was transferred into County School in the 5th grade." At trial, J.S. testified that appellant sexually abused her at her great-grandmother's house "over the course of years until she was maybe 14" and that the abuse "was just kind of like a routine almost, kind of like a pattern." She described 4 specific instances of abuse at that location.

The first incident occurred when J.S. was 9 or 10. She testified that appellant walked into her bedroom and "sat on the bed . . . [and] proceeded to take his hands and touch [J.S.'s] breast in kind of a circular motion." After touching her, he got up, told her, "[d]on't

[1] Pursuant to Maryland Rule 8-125, this opinion refers to the minor victim as "J.S.," the victim's mother as "T.S.," the victim's great-grandmother as "J.H.," the victim's brother as "M.S.," and the great-grandmother's neighbor as "P.St.."

say anything," and went back in his bedroom. She stated she knew her age because she was wearing her "school T-shirt" from elementary school that "had a lion on it because that was our mascot."

The second incident she described occurred at her great-grandmother's house. J.S. testified that appellant came into her bedroom at night, licked her breast, and then "perform[ed] oral" after appellant removed her underwear.

In the third incident, J.S. stated that appellant "tried to put his fingers inside of [her] vagina. It was late. It was maybe 12 o'clock, 1 o'clock? He started again with the touching of the breast, the oral, and then he proceeded to place his index finger and his middle finger in [her] vagina."

The fourth incident J.S. described matched the pattern of the others. Appellant came into her bedroom at night and touched and licked her breast and performed oral sex on her. This time, however, appellant "tried to stick his penis in [J.S.'s] vagina. It didn't – his penis wasn't able to go all the way in, but at some point it went in a little."

J.S. testified that she did not try to stop her uncle or call out because she "didn't know what to do." She testified that her aunt usually took ZzzQuil to help her sleep at night "and once she's [a]sleep she's pretty much gone for the night." J.S.'s grandmother stayed at her boyfriend's frequently and was only occasionally at the residence. She testified that "part of the reason [she] never said anything was to protect [her] aunt because she goes through a lot. So [J.S.] was thinking that [she] was protecting her."

T.S., J.S.'s mother, testified that J.S. "had started cutting herself, and [she] couldn't figure out why." She stated that she noticed J.S. was more withdrawn and that she noticed scratch marks and "faint bruising" on her. In J.S.'s room, T.S. observed there were "dates on the mirror" that J.S. "later disclosed were the dates she had cut herself." She sought therapy for J.S. in early 2021.

In April of 2021, J.S. told her resource coordinator, Ashleigh Owens, that "her uncle" abused her "multiple times" and "that he would perform oral on her." Ms. Owens testified that J.S. "stated some ages, like 10, 11, 12, and told me that, you know, it happened multiple times and that she had never shared that information with anyone."

Appellant's wife testified that she and J.S. had a "great" relationship and that J.S. never expressed any concerns to her about her husband's alleged conduct. She testified that J.S. continued to visit them when they moved from Corchran Avenue to a home on Old Harford Road. She testified that she believed J.S. was lying because she had similar traits to Mrs. Nunez's sister who "has done manipulation and lied and did different things to family, as well as to even some of our friends and there has just been some patterns."

The State asked Mrs. Nunez about a jail call during cross-examination where she and her husband discussed the charges which misspelled J.S.'s name. During the call, Mrs. Nunez told her husband to stop talking because he stated that he could say, "well, I don't know that person."

Appellant elected to testify, stating he was "shocked" by the allegations and that he never did any of things of which he was accused. He testified that when he and his wife

were living with J.H., J.S.'s great-grandmother, that J.S. would come over to see them. When asked about the same jail call, appellant testified that "I never said I don't know the person. I said, 'I don't know the person's name.'"

A neighbor, P.St., who drove J.S. to school for several years, testified that she never saw any "inappropriate conduct" between appellant and J.S. and that she "believe[d] he did nothing to J.S."

J.H. testified that J.S. only stayed at her home on the weekends, not during the week, and that she was always present during those times. She testified that if she knew of any inappropriate conduct in her home she would have called the police or "probably would have tried to hurt somebody." She testified that she couldn't "see [appellant] hurting her in any kind of way. [J.S] had seemed to have just a beautiful relationship with him and [her aunt], and she always wanted to be around them."

J.S.'s brother, M.S., testified that his sister seemed happy when she was with her aunt and appellant. He lived with his aunt and appellant while he was on breaks from college and that J.S. would come over to "go to the movies, get food, or then sometimes we would stay in and play games and interact as a family."

At the close of the defense's case, defense counsel renewed his motion for a judgment of acquittal, stating as follows:

> "I am going to renew a request for a motion for judgment of acquittal…. I would argue the State again has failed to establish the date for these alleged incidents. You heard a number of dates that are mentioned from multiple witnesses. Eight, nine years old, 10 years old, 2017. I think certainly the State hasn't laid the foundation to allow this jury to even be in the position to

> determine when these allegations may have occurred, and so that is significant in their decision about whether or not they in fact did occur."

The trial court denied the motion. The jury returned guilty verdicts for 4 of the 6 counts.

At sentencing, the following exchange occurred between appellant and the court:

> "THE DEFENDANT: Good afternoon, Your Honor. I just wanted to thank you for giving me the opportunity to speak to you on my behalf. I would like to say a few words to the victim and the victim's family. Is that okay?
>
> THE COURT: I'd rather you not.
>
> THE DEFENDANT: Okay. That's fine. Can I speak to my wife and her family?
>
> THE COURT: You can say anything that you wish to say, and when I say I would rather you not, I am not stopping you. I am just saying I would rather you not.
>
> THE DEFENDANT: Okay.
>
> THE COURT: You have to understand that as soon as you finish speaking I am going to make a decision in your case and one of the things I am going to factor in is what you say at this particular time. So when I say I'd rather you not, if you do and say something I believe is going to not assist you in getting any sentence that you believe the least—the most lenient sentence that I can give, that is going to be on you. So when I say I'd rather you not, I'd rather you not but I am not stopping you from doing anything.
>
> THE DEFENDANT: That's fine. But in that case I would at least speak to my wife and her family.
>
> THE COURT: Whatever you want to do, sir."

Appellant was sentenced as noted above and noted this timely appeal.

II.

Appellant argues that the court erred in denying the motion for judgment of acquittal because the State did not establish when any particular incidence of sexual abuse occurred.

Appellant recognizes that an exact date is not an essential element of the offense, however, appellant asserts that J.S.'s testimony "barely established a general timeframe for when the conduct may have occurred."

Second, appellant asserts that the trial court erred by admitting excessive evidence of J.S.'s self-harm because it was not relevant and to the extent any of T.S.'s testimony about the harm had probative value, this value was outweighed by the prejudicial effect of the testimony. While the testimony about J.S.'s self-harming was relevant to explain why J.S. went to a therapist, it was not relevant to establish whether appellant perpetrated sexual abuse of J.S. If the evidence of self-harm did bear on the question of appellant's conduct, any evidence beyond noting that self-harm occurred did not carry additional probative value and only sought to "inspire sympathy for J.S."

Third, appellant argues that he was denied his right to allocute at sentencing because the court stopped appellant from issuing a possible apology or expression of remorse to J.S. Appellant asserts that the court's actions entitle him to a new sentencing hearing.

The State argues that it presented sufficient evidence to convict appellant of the four counts of sexual abuse of a minor over four different time periods because one can be convicted of multiple counts of sexual abuse of a minor based either on a singular act or a continuing course of conduct where the date ranges do not overlap. The State asserts that even though J.S. did not testify that the sexual abuse was continuous or provide specific dates of when the conduct began and ended, the jury was free to infer that the four incidents she described were examples of a pattern of sexual abuse occurring between 2016 and

2020. At a minimum, the State maintains that the evidence supported an inference that the abuse occurred from the time J.S. was 9 until appellant and his wife moved when J.S. was 13 and the convictions should be affirmed.

On the second issue, the State asserts appellant did not preserve the question of whether evidence of J.S.'s self-harm was irrelevant and prejudicial because appellant did not object each time evidence of J.S.'s self-harm was presented at trial. The State asserts that by the time appellant objected to the mother's response about the dates on J.S.'s mirror corresponding to dates she had attempted self-harm, he had waived his claim because J.S., J.S.'s mother, and Ms. Owens had testified about J.S.'s attempts at self-harm. Even if preserved, the State maintains the evidence was relevant because it corroborated the severity, timing, and occurrence of the abuse. The State argues evidence of self-harm made it slightly more probable that the abuse occurred and had a tendency to make J.S.'s account of the events more believable.

The State argues that any claim of unfair prejudice resulting from evidence of J.S.'s self-harm lacks merit. Despite appellant's claim that the answer by J.S.'s mother evoked the jurors' sympathy, appellant did not explain how this may have impacted their ability to decide the case on anything other than the substantive evidence. The State asserts that even if the trial court erred, any error was harmless beyond a reasonable doubt because the mother's response about the notations on the mirror relating to self-harm was cumulative to the other evidence of self-harm.

The State argues that the court did not deny appellant his right to allocute at sentencing and, regardless, this question was not preserved for appellate review. The State asserts that defense counsel did not object to the court's expression that it would "rather [appellant] not" speak to the victim and her family at sentencing, thus not preserving the issue for review. On the merits, the State argues that the right to allocute consists of the right of the defendant to address the sentencing body, not any others present at sentencing. Because appellant does not have a right to address anyone other than the court, the State maintains that the court did not prevent appellant from exercising his right of allocution.

III.

First, we address appellant's assertion that there was insufficient evidence to support his convictions for Counts 3 – 6. We review the sufficiency of the evidence to determine "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." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *Scriber v. State,* 236 Md. App. 332, 344 (2018). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Scriber*, 236 Md. App. at 344. The question before us 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." *Id.* (emphasis in original).

Reviewing the sufficiency of evidence to support a criminal conviction, we consider whether the evidence could reasonably support a finding of guilt beyond a reasonable

doubt. *Tichnell v. State*, 287 Md. 695, 717 (1980). The standard requires that "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*.

The State charged appellant under Maryland Code (2002, 2021 Repl. Vol.), § 3-602 of the Criminal Law Article ("Crim. Law")[2] which states as follows:

> "(a)(1) In this section the following words have the meanings indicated.
>
> (2) "Family member" has the meaning stated in § 3-601 of this subtitle.
>
> (3) "Household member" has the meaning stated in § 3-601 of this subtitle.
>
> (4)(i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.
>
> (ii) "Sexual abuse" includes:
>
> 1. incest;
> 2. rape;
> 3. sexual offense in any degree; and
> 4. any other sexual conduct that is a crime.
>
> (b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
>
> (2) A household member or family member may not cause sexual abuse to a minor.
>
> (c) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.
>
> (d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for:
>
> (1) any crime based on the act establishing the violation of this section; or

[2] All subsequent statutory references herein shall be to Md. Code, Criminal Law Article.

> (2) a violation of § 3-601 of this subtitle involving an act of abuse separate from sexual abuse under this section."

To convict under this statute, the State must prove the following three elements: "(1) that the defendant is a parent, family or household member, or had care, custody, or responsibility for the victim's supervision; (2) that the victim was a minor at the time; and (3) that the defendant sexually molested or exploited the victim by means of a specific act." *Schmitt v. State*, 210 Md. App. 488, 496 (2013).

While appellant does not argue he was charged incorrectly, for clarity, we note that the Maryland Supreme Court held in *State v. Mulkey*, 316 Md. 475, 488 (1989), as follows:

> "In a sexual offense case involving a child victim, the trial court's determination as to how 'reasonably particular' a charging document should be as to the time of the offense should include the following relevant considerations: 1) the nature of the offense; 2) the age and maturity of the child; 3) the victim's ability to recall specific dates; and, 4) the State's good faith efforts and ability to determine reasonable dates. This is not meant to serve as an all-inclusive list. We indicate these factors for the purpose of assisting trial judges in evaluating the 'reasonable particularity' requirement under the circumstances."

Likewise, this Court has held that the State may "charge continuous acts of sexual abuse within one count" or it may "charg[e] such acts separately." *Bey v. State*, 259 Md. App. 324, 340 (2023). Generally, the exact date of the offense is not an essential element of the crime. *Reece v. State*, 220 Md. App. 309, 333 (2014).

Appellant does not appear to contest the sufficiency of evidence regarding the three elements necessary to prove sexual abuse of a minor. Appellant was responsible for J.S. as a caretaker, she was a minor at the time of the alleged incidents, and her testimony alone is

sufficient evidence of sexual abuse. *See Reeves v. State*, 192 Md. App. 277, 306 (2010) ("It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction."). In the case *sub judice*, appellant asserts that there was insufficient evidence for him to have been convicted in any of the timeframes enumerated by the counts in the indictment.

The State charged appellant with numerous counts of sexual abuse of a minor, but only prosecuted the following 6 counts:

> Count 1: Sexual abuse of a minor on or about September 7, 2014 – July 31, 2015;
> Count 2: Sexual abuse of a minor on or about August 1, 2015 – July 31, 2016;
> Count 3: Sexual abuse of a minor on or about August 1, 2016 – July 31, 2017;
> Count 4: Sexual abuse of a minor on or about August 1, 2017 – July 31, 2018;
> Count 5; Sexual abuse of a minor on or about August 1, 2018 – July 31, 2019; and
> Count 6: Sexual abuse of a minor on or about August 1, 2019 – January 31, 2020.

The jury acquitted appellant of counts 1 and 2 but convicted appellant on the remaining 4 counts.

J.S. testified that she was born in September of 2006. Accordingly, counts 1 and 2 occurred when J.S. would have been 8 and 9 years old. Counts 3 through 6 consist of the time periods when J.S. was 10 to 13 years old. At trial, she testified that the first incident she remembered occurred when she was still in elementary school. Her therapist, Ms. Owens, likewise testified that J.S. told her she was "10, 11, and 12" when many of the incidents occurred. J.S.'s mother also testified that she stated in her application for a protective order that the abuse began in 2017, which the jury could infer came from

conversations she had with her daughter. From this testimony, the jury distinguished Counts 1 and 2 from the others and determined there was not sufficient evidence to convict appellant for the time periods of those counts. No other evidence suggested J.S. was abused prior to the time period in Count 3. The evidence, however, is sufficient to support convictions during the time periods of the remaining counts.

IV.

Appellant argues next that T.S.'s testimony about seeing scratch marks on J.S.'s mirror that T.S. initially thought were meant to track J.S.'s menstrual cycle, but "were the days that she had cut herself," was irrelevant and, to the extent any of it was relevant, any probative value was substantially outweighed by the risk of unfair prejudice. We disagree.

We review a trial court's admission of evidence for an abuse of discretion. *State v. Young*, 462 Md. 159, 169 (2018). The question of relevancy, however, is a legal question and reviewed *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011). Generally, relevancy is a low bar and evidence that has "any 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" is relevant. Md. Rule 5-401.

"The real test of admissibility of evidence in a criminal case is 'the connection of the fact proved with the offense charged, as evidence which has a natural tendency to establish the fact at issue.'" *Banks v. State*, 84 Md. App. 582, 589-90 (1990) (quoting *Dorsey v State*, 276 Md. 638, 643 (1976)). The *Banks* Court explained as follows:

> "Evidence of collateral facts, or of those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute, should be excluded, for the reason that such evidence tends to divert the minds of the jury from the real point in issue, and may rouse their prejudices."

Id. at 590. Keeping the concerns of distracting the jury in mind, individual pieces of evidence must also be considered in the context of the other evidence presented so that the query becomes whether "in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable[.]" *Snyder v. State*, 361 Md. 580, 591 (2000).

Appellant did not object to introduction of evidence that J.S. was cutting herself until J.S.'s mother testified on the second day of trial. Prior to her testimony, the jury heard that J.S. engaged in self-harm from both J.S. and Ms. Owens. Appellant seems to only take issue with the additional detail of T.S. realizing that the marks on her daughter's mirror were a log of the self-harm, further confirming that J.S. engaged in self-harm and increasing the need to speak with a therapist. While this evidence on its own might not speak to whether appellant engaged in sexual abuse, it does explain why J.S. sought to speak with a therapist where she then disclosed the abuse.

Appellant asserts that this specific detail is prejudicial because it seeks only to garner additional sympathy form the jury. In rape cases, however, evidence of a victim's "mood and actions following the alleged rape demonstrated, albeit circumstantially, that [the victim] had not engaged in consensual sex" is relevant. *Parker v. State*, 156 Md. App. 252, 273 (2004). The Court in *Parker v. State* concluded that the testimony from the

grandmother about the rape victim's "abrupt behavioral change" allowed the jury to "infer, legitimately, that [the victim's] behavior changed due to the rape." *Id.* Even if the evidence of the marks on the mirror did not point specifically to appellant as the abuser, it was relevant to illustrate the changes experienced by J.S. after the alleged incidents of abuse, thus making her allegations of abuse more probable.

Nor was this testimony so prejudicial that it had the potential to significantly outweigh its probative value. *See* Rule 5-403 (Evidence that is relevant, however, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."). Given the subject matter of this case, the sexual abuse of a child, one mention of a mother realizing that marks on her daughter's mirror were days her daughter committed self-harm, did not likely prejudice the jury to the extent it ignored the facts of the case.

V.

Appellant asserts the court denied him his right to allocute at sentencing when it stated that it "would rather [he] not" address J.S. and her family directly. Even if appellant had preserved this issue for review by objecting to the court's statement at sentencing, we nonetheless disagree with appellant.

We hold this issue is not preserved for our review because appellant did not raise at sentencing the argument that he was denied his right to allocute at the sentencing hearing. The court gave appellant many opportunities to object and appellant was not denied his

opportunity to allocute. *See Scott v. State*, 230 Md. App. 411, 455 (2016) (holding Scott waived his right to appeal his allocution because the "resentencing judge expressly recognized that Scott had the right to allocution and gave him the opportunity to allocute and present mitigating information").

Even if this issue were properly before us, we would hold that appellant was not denied his right to allocute. Rule 4-342(e) requires as follows, "[b]efore imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment." The Rule provides "a unique opportunity for the defendant himself to face the sentencing body, without subjecting himself to cross-examination, and to explain in his own words the circumstances of the crime and his feelings regarding his conduct, culpability, and sentencing." *Harris v. State*, 306 Md. 344, 358 (1986).

Here, the court did not err when it stated that it would rather appellant not address J.S. directly. The right to allocution includes the right to address the sentencing body, *i.e.* the court (and jury), not the right to address the victim or any others present in the courtroom at sentencing. The court did not prevent appellant from making an apology or expressing remorse to the court or the victim and clarified four times that appellant could "say anything that [he] wish[ed] to say, and when I say I would rather you not [address the victim], I am not stopping you."

Further, the Supreme Court of Maryland has held that a denial of a right to allocution, must be a total denial to vacate the sentence and hold a new sentencing hearing.

Harris, 306 Md. at 359 (holding when a defendant timely exercises his or her right to allocute, the court must afford defendant "a fair opportunity to exercise [that] right" or the sentence must be vacated and a new sentencing hearing held). The court did not expressly discourage appellant from apologizing or expressing remorse for his actions here. The court simply recommended that appellant not speak directly to the victim. Appellant took the opportunity to speak on his own behalf and could have apologized had he wished to do so.

JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.