Circuit Court for Worcester County
Case No.: C-23-CR-21-000070

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1947

September Term, 2021

TREMAINE ROBERTSON WILSON

v.

STATE OF MARYLAND

Zic,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 1, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Tremaine Robertson Wilson, "Appellant," was indicted in the Circuit Court for Worcester County, Maryland, and charged with sexual abuse of a minor, third and fourth degree sexual offense, and second degree assault. He was convicted on all four counts following a bench trial. Appellant was then sentenced to 25 years, with all but 10 years suspended, for sexual abuse of a minor. The judge imposed no sentence for the conviction of third degree sexual offense, and the remaining counts merged. Appellant was also ordered to serve five years of supervised probation upon release and to register as a sexual offender. On this timely appeal, Appellant raised the following questions:

> 1. Was the evidence insufficient to convict Appellant [of sexual abuse of a minor] where the State failed to prove that he had temporary care of a minor?
>
> 2. Did the court err in admitting hearsay?

For the following reasons, we hold that the evidence was sufficient to sustain Appellant's conviction for sexual abuse of a minor. We further hold that, although the court erred in admitting some hearsay testimony that was beyond the scope of the exception for a complaint of sexually assaultive behavior, the testimony that exceeded the exception did not contribute to the trial judge's finding that Appellant had committed the crimes with which he was charged, and the error was therefore harmless. We shall affirm the judgments of the circuit court.

BACKGROUND

A minor girl whom we shall refer to as "J." testified that, on or around July 18, 2020, when she was twelve-years-old, she accompanied her friend's family on a trip to stay three

nights in Ocean City, Maryland, in a rented condominium unit, or "condo."[1] The family group with whom J. would be staying included her similar-aged friend, a girl whom we shall call "T.," as well as T's mother, T's younger brother, and Appellant (who was T's stepfather).[2] Part of the trip included a family gathering to celebrate T.'s twelfth birthday, which was attended by these family members, as well as T.'s uncle and his girlfriend, who were not identified at trial, and T.'s grandparents.[3]

With respect to how it came about that J. was part of T.'s family trip to Ocean City, J. testified that she first learned of the event when T. invited her to go on the trip with her family. J. then asked her mother for permission, and J.'s mother then spoke to T.'s mother. After the mothers had conversed, J.'s mother told J. she could go on the trip.

J. testified that, during the stay in Ocean City, T.'s mother took her and T. (and T.'s brother) to Jolly Roger's Amusement Park, as well as to the beach and boardwalk. There was no evidence that Appellant accompanied J. during these excursions.

The first night after they arrived in Ocean City, J. went to the boardwalk with T., T.'s brother, and T.'s grandparents. When they returned to the condo, they found T.'s

[1] In accord with Md. Rule 8-125, this Court does not identify the victim of a crime, or related individuals, except by his or her initials, if the victim of the alleged crime was a minor child at the time of the crime. *See* Md. Rule 8-125(a)(1), (b)(1).

[2] We note that, at various points in the transcript, Appellant is referred to sometimes as T.'s stepfather and sometimes as her father. In his statement to the police, Appellant stated he was not T.'s biological father.

[3] Although J. testified T.'s "uncle and aunt" were present in the condo, it appears the unidentified "aunt" was the uncle's girlfriend.

mother and the uncle's girlfriend waiting for them. Meanwhile, Appellant and T.'s uncle went elsewhere and had not returned by the time J. went to bed that evening.

The condo had three bedrooms and the sleeping arrangements were as follows: J. and T. slept in one room on bunk beds they placed together; Appellant and T.'s mother stayed in another bedroom; and T.'s uncle and his girlfriend occupied the third bedroom. T.'s grandparents slept on the sectional couch. T.'s brother slept either with his mother or in the bedroom with J. and T.

J. testified that, on the first night there, she fell asleep between 1:00 a.m. to 1:30 a.m. But, during the night, J. woke up when she heard "a big thump" in her bedroom. She looked toward the hallway and saw Appellant—wearing only boxer shorts—get up off the floor in her bedroom and leave the girls' room.[4]

J. went back to sleep, but woke up again when she felt "something" on her legs. In her testimony, she said that, after she woke up, she could feel that someone was "licking" her legs and there were "like, teeth, like, sucking on my toe." J. testified that then, "he, like, puts his hands underneath the blanket that I was sleeping with, and I feel him touching my private part." J. continued:

> And then I feel his hand go underneath the blanket and started touching my private part. Everything just happened really quick. And then he started to get on top of me. That's when I pinched my best friend [T.], because she's, like, a really deep sleeper. I didn't know what to do, so I just pinched her and that's when she woke up and she was, like, ["]ow, [J.].["] That's when he got off of me and, like, went out. And I knew it was him because of the hallway, the light was on, so I saw that it was him.

[4] On cross-examination, J. testified that, after this "thump," she heard T.'s mother (Appellant's wife), tell him to come out of the girls' bedroom.

> And then that's when I got up real quick to lock the door. And I just heard him trying to come back in because he was, like, moving the doorknob, and he kind of got mad – not mad, but he just went, like, (indicating) and then left.

At trial, J. identified Appellant as her assailant, and clarified that, when he touched her vagina, "[i]t was the bottom of my vagina, but it was, like, he was touching it because I had clothes on. He didn't go underneath my clothes." J. was wearing shorts and underwear at the time. She maintained that Appellant was "kind of touching, like, circling around my vagina." J. further explained that, when Appellant was on top of her, "his hands were, like, beside me, like, kind of like in a pushup position."

She acknowledged that she did not say anything, but noted that T. did after she pinched her awake, and that was when Appellant left the room. After that, J. immediately told T. that "your dad came in and tried doing stuff to me[,]" but T. did not understand, so J. told her to go back to sleep and she would tell her in the morning.

The next day, J. told T. what happened. T. was in "shock," started crying, and wanted to tell an adult, but J. declined. J. testified that she thought it would "ruin our relationship."

After the trip, Appellant started sending messages to J., and continued to do so until sometime in September. He first contacted her through the TikTok app.[5] J. testified that,

[5] TikTok is "a global video-sharing application, or 'app,' owned by Chinese company ByteDance and used by over 100 million Americans[.]" *Marland v. Trump*, 498 F. Supp. 3d 624, 630 (E.D. Pa. 2020), *appeal dismissed*, No. 203322, 2021 WL 5346749 (3d Cir. 07/14/2021).

in one of these messages, Appellant "would say, like, don't tell our family. Like, it would destroy our family."

At another point, Appellant told J. that he worked for Gucci and he was going to give her a pair of Gucci shoes.

J. said that, at some point, Appellant asked for her cell phone number, and J. gave Appellant her number. Appellant then began sending text messages to her cell phone. At one point, while J. was out with one of her aunts, "Aunt J.", she received a text from Appellant, asking J. for her picture. J. sent him one, and in return, Appellant sent her a picture of himself, shirtless. J. testified that she "got freaked out[,]" and told Aunt J. about the texts.

J. also testified that, on another occasion, near midnight, she was with her grandmother when Appellant tried to call her cell phone. She testified she "got weirded out[,]" and blocked him. J. deleted the texts, as well as the messages from TikTok, and, until September 29, 2020, she did not tell anyone other than T. about what happened in Ocean City.[6]

J. testified that, after the Ocean City trip, the two families—J.'s family and T.'s family, including Appellant—continued to spend time together. For instance, sometime near the end of September 2020, the families went to a winery to celebrate T.'s mother's birthday. After that, J. went with T. to T.'s grandmother's house where J. and T. again

[6] Detective Michael Karsnitz obtained Appellant's Verizon cell phone records and confirmed that three calls were made from that phone to J.'s cell phone on September 26, 2020.

discussed the Ocean City incident. T. wanted J. to report it, but J. still declined. J. eventually reported the July incident to her mother on September 29, 2020, a few days after this winery trip.

J. also testified that, after the incident, sometime between July and September 2020, she went to T.'s house one time. Appellant was present, as was T.'s grandmother and uncle. J. testified that was the only time she went to T.'s house because, other than that, "nobody was there to take care of me." She confirmed that she felt safe then "[b]ecause I knew he wouldn't do anything, and it was, like, daytime" and she was "only there for a little bit."

On cross-examination, J. was asked several clarifying questions about how long the incident took, what type of shorts she was wearing, whether Appellant touched her anywhere else or said anything, whether she smelled alcohol, whether she noticed anything unusual about Appellant, or whether he was naked. She was asked what time it was when Appellant left and she testified she checked her phone and saw that it was 2:00 a.m. She was also asked other clarifying questions on cross, some of which added details about the incident, such as the fact that Appellant touched J.'s vagina with his left hand, but none of which significantly contradicted her direct examination.

J. acknowledged that, prior to the trip to Ocean City, she never went anywhere with Appellant alone. And she said that she had never been left in Appellant's care. She testified that she did go with T. and Appellant to a sporting goods store on one previous occasion, but, she recalled, that was a "long time ago[,]" and was "only for an hour."

T.'s grandmother (Appellant's mother-in-law) testified she was present in the Ocean City condominium unit when Appellant returned with her son late the night of the incident. The men were both intoxicated. T.'s grandmother testified that she saw Appellant stumble down the hallway leading to the three bedrooms, and she heard him inside the girls' bedroom. She then heard him vomiting in his own bedroom.

J.'s friend T. testified that J. pinched her awake and she saw Appellant "on the bed, but not, like, completely on it." The next morning, J. told T. "your dad was touching me in places that were inappropriate." And, after T.'s mother's birthday party in September 2020, J. told T. that Appellant had "inappropriately texted" her.

On cross-examination, T. was asked what J. told her the morning after the incident. T. testified, without objection: "She said -- I don't remember exactly, but I know she said along the lines of, your dad came into our room and he got under our covers and started touching me near my thighs and more up."

Following T.'s testimony, the court heard from J.'s mother, who testified that she allowed J. to go to Ocean City with T.'s mother. She found out, at the "last minute," that Appellant was going as well. She further testified that she knew that T.'s grandmother, as well as T.'s uncle and the uncle's girlfriend would all be in attendance as well.

When asked on cross-examination to provide more detail, J.'s mother testified: "I've always talked to [T.'s mother] about the trip because it's the mom. I have the relationship with [T.'s mother]. So [T.'s mother] is the one who made the plans to go to Ocean City because it was [T.'s] birthday." Further, "I trusted her because it was with [T.'s mother].

She clearly said that it was her with the girls. She never mentioned that [Appellant] was even going until the last minute."

J.'s mother further testified that, in September, J. told her what happened on the night in question. As will be covered in more detail in the discussion that follows, J.'s mother testified, over a general objection, that J. told her that Appellant "started touching her[,]" then "[l]icked her" toes and legs, and also touched "her private part." She further testified that, after the trip, she learned from J. that Appellant was messaging J. on TikTok, had offered to buy her Gucci shoes, and was attempting to call her cell phone.

On December 28, 2020, Detective Michael Karsnitz, of the Ocean City Police Department, interviewed Appellant. A copy of that recorded interview was admitted at trial as State's Exhibit 1, and was played for the court.[7]

During the interview, Appellant acknowledged he understood there were allegations that he touched J. inappropriately during the Ocean City trip. He was not sure where the group stayed in Ocean City because his wife made the travel arrangements.

Several times during the interview, Appellant stated that J. had been in his "care" on prior occasions. More specifically, at one point during the interview, the following statements were made:

> DETECTIVE KARSNITZ: And who is [J.] to you?
>
> [APPELLANT]: She's this -- my daughter's friend. And pretty much we've become just very cool with her parents. **So I know that she's been in our care like prior to Ocean City**.

[7] On August 31, 2022, this Court granted Appellant's Unopposed Motion to Correct the Record with an unredacted and a redacted transcript of this interview. We shall refer to the redacted transcript herein.

DETECTIVE KARSNITZ: **She's in what?**

[APPELLANT]: **She's been in our care.**

DETECTIVE KARSNITZ: Okay.

[APPELLANT]: Yeah. She's like -- she stays overnight at our house -- the house on Duncan. So not at Long Bottom, but the house that my wife maintains. But I've been there. You know, since we've been back together, **she's been in our care together. I've taken them, you know, by myself**. You know, when [T.'s] [sic] had a doctor's appointment, she stayed at the house. You know, when [J.] had to come with us. She's been -- we spent the night, after we left Ocean City, at their house and, you know, we celebrated my wife's birthday in September. She's been over several times since --

(Emphasis added.)

Appellant stated that he and his family stayed at J.'s house after the trip to Ocean City. He also stated that, sometime after the Ocean City trip, J. had been to their house "several different times" and she stayed overnight. But Appellant said that [J.] had never stayed at his current house. He further admitted that he spoke to J.'s parents and asked if he and his wife could be J.'s godparents because "she's always in our care . . . ." According to Appellant, at some point, "months down the line[,]" he called J.'s parents and asked them whether she had godparents and asked "can we be her godparents?"

With regard to the events on the night in question, Appellant admitted that he went out drinking that night and became intoxicated. Appellant admitted that, when he got back to the condo that night, he was "sloppy," was "falling all over myself[,]" and was waking people up. He went to his room, and started vomiting in a bathroom. According to Appellant, he slept in his bed until morning.

Detective Karsnitz asked Appellant why he had J.'s cell phone number, and Appellant replied that it was "for contact emergency. You know, as a child, like -- you know, again, she's been in my care, you know, nothing personal. Just to be reaching out to her." He contended that he obtained J.'s number after he saw something she posted on TikTok he considered "shocking," and he had "decided to reach out" to her because "I like kind of feel like I'm almost like a godparent" to her. He denied sending her text messages or calling her, except for the one time that he "butt dialed" her number while he was inebriated during a trip to Florida. And, he agreed that he asked J. for a picture but claimed that it was not "a personal picture."

He also stated that the reason he offered to get J. some $300-400 Gucci shoes is because she was present when he gave T. a pair and he thought J. seemed "envious." He explained: "[A]s we did things for our kids, we did things for her as well."

With respect to the specific allegations, Appellant heard that he had been accused of "sucking" on J.'s toes, and he denied that he did so. He maintained that he did not touch J.'s toes or her vagina, not even through her clothing. He denied going into the girls' bedroom. And, he denied that he was so drunk that he would not remember.

After Appellant's motion for judgment of acquittal was denied at the end of the State's case-in-chief, the court heard from T.'s mother, who was also Appellant's former spouse. T.'s mother testified that, prior to the Ocean City trip, she told her daughter, T., that she could invite a friend. After T. invited J., T.'s mother contacted J.'s mother "to coordinate the trip with her."

T.'s mother maintained that Appellant did not have a history of caring for J., and that any such arrangements were always coordinated between her and J.'s mother. T.'s mother's testimony included the following:

> Q. Has [J.'s mother] to your knowledge ever left any of her children, or [J.] specifically, in the care and custody of Tremaine [Appellant]?
>
> A. No.
>
> Q. He -- has Tremaine -- have you ever heard him express any desire to be a godparent to [J.]?
>
> A. No. He discussed pretty much, like, me being that for her, but not him in particular.
>
> * * *
>
> Q. Okay. Have you heard Tremaine before make any comments regarding caring for [J.]?
>
> A. No.
>
> Q. Have -- the planning of the trip, was Tremaine involved in that at all?
>
> A. No. And he never was when we have coordinated play dates or the girls going on trips or whatever together.
>
> * * *
>
> Q. Okay. So at any time -- I might have asked this. Maybe I'm phrasing it differently. Did [J.'s mother] ask specifically who was going on the trip?
>
> A. No. She -- I mean, I volunteered to her that it would be just, you know, me and the kids, not knowing who else was going.
>
> Q. Okay. The uncle, the grandma?
>
> A. Yeah. That was kind of put together towards the end of the trip, but Tremaine and even my parents going as well. But the initial thought was me

> and the kids and [J.] going for [T.'s] birthday because that's really what it was for.
>
> Q. Okay. And regardless of what Tremaine may have said, was -- to your knowledge was [J.] ever left in his care?
>
> A. No.

T.'s mother further testified that, on the night in question, Appellant came back to the condo intoxicated and was "throwing up," and "falling all over the place. He could barely stand up." She testified: "I've seen him drinking. I've never seen him drunk that way, though." T.'s mother said she never saw him go into the girls' bedroom. She maintained that Appellant was in her room the entire evening. She further testified that she only became aware of the allegations in this case on September 30, 2020, after J.'s mother called to tell her about J.'s version of events.

We shall include additional detail in the following discussion.

DISCUSSION

I. Sufficiency of Evidence that J. was in Appellant's Temporary Care

Appellant first contends the evidence was insufficient to convict him of sexual abuse of a minor because the evidence did not demonstrate he had "temporary care" of J. as specifically alleged in the indictment. The State responds by asserting that the evidence—that included Appellant's own inculpatory statements to Detective Karsnitz—established that he had "temporary care or custody" over J. during the trip, and therefore, the evidence was sufficient to sustain his conviction for sexual abuse of a minor under Criminal Law Section 3-602(b)(1). *See* Md. Code (2002, 2012 Repl. Vol., 2020 Supp.), § 3-602(b)(1) of the Criminal Law Article ("Crim. Law").

Appellant's argument that the evidence was insufficient to sustain a conviction of violating Crim. Law § 3-602(b)(1) concerns Count One of the indictment, which charged as follows:

> The Grand Jurors of the State of Maryland, for the body of Worcester County, do on their oath present that TREMAINE ROBERTSON WILSON, late of said County, on or about July 18, 2020, in Worcester County, State of Maryland, did cause sexual abuse to [J.], a minor, the defendant having temporary care of said child, in violation of Section 3-602 of the Annotated Code of Maryland and contrary to the form of the Act of Assembly in such cases made and provided and against the peace, government, and dignity of the State.

Pertinent to our discussion, Crim. Law § 3-602(b)(1) provides that "[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." Accordingly, to obtain a conviction in this case for sexual abuse of a minor, the State was required to prove three elements beyond a reasonable doubt: '"(1) that the defendant . . . 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."' *Scriber v. State*, 236 Md. App. 332, 343 (2018) (quoting *Schmitt v. State*, 210 Md. App. 488, 496 (2013)). Appellant raises no dispute on appeal in this case as to the sufficiency of the evidence of the second and third elements. The only element at issue is the first one, *i.e.*, whether Appellant had "temporary care" of the minor child J. at the time of the alleged physical contact on or about July 18, 2020.[8]

[8] The State points out in its brief that the element of "temporary care" relates only to the conviction of § 3-602(b)(1). The other three offenses of which Appellant was convicted did not include this element.

Here, at the end of the State's case-in-chief, Appellant moved for judgment of acquittal on the sexual abuse of a minor count, contending there was "no prior contact -- prior custody arrangement prior to the trip to Ocean City. It was planned by the mothers. I think [J.'s mother] was very adamant about allowing the daughter to go in [T.'s mother's] care. And the evidence of the State deduced [sic] is that Tremaine was a last second add on."

After hearing from the State, as well as rebuttal from defense counsel, the court denied the motion, finding as follows:

> [W]ell, at many times during Mr. Wilson's statement to Detective Karsnitz, you know, he used the word ["]care["] multiple times.
>
> So at the beginning -- somewhere near the beginning of that interview he said that -- referring to the alleged victim, she's been in our care prior to Ocean City, our care together, that was a separate statement. He referenced she's been in my care. He suggested that she was or he was on par or the equivalent of a godparent to the victim -- the alleged victim, offered to be a godparent, again then used in our care language. So that is a suggestion certainly that in his mind there had been at least occasions when he thought that the alleged victim was in his care.
>
> Case law does -- which is relevant at this stage -- indicates that for the purpose of a supervisory capacity determination, that it can only be obtained upon the mutual consent expressed or implied by the one legally charged with the care. A parent may not impose responsibility for the supervision of his or her minor child on a third person unless that person accepts the responsibility. And until someone demonstrates otherwise to the Court, care and custody is not something that can only reside with one person. So my wife and I can have care and custody of our children at the same time. I can also be responsible for care and custody of my children from a general sense even if I'm not physically present in the place at that particular time.
>
> Based on basically an implied care situation, because I can appreciate that the original understanding was that it was -- that the defendant was not even going to be on the trip, or it wasn't -- it wasn't understood that he was going to be on the trip. I don't know that it was discussed. I have no evidence

> that it was discussed that he was not supposed to go on the trip. But at some point it became known that, yes, in fact he was going to be on the trip. The mother knew that he was going to be on the trip. So when you've got your 13-year-old daughter going to Ocean City with two adults, it is certainly more than reasonable to believe that you are entrusting the care and custody of your minor to those two adults.
>
> And there is multiple statements from the defendant through his interview with Detective Karsnitz that indicate that this would not have been the first or only time that he was entrusted with her care and custody.
>
> Your motion is denied.[9]

After all the evidence was received, Appellant's defense counsel argued that Appellant did not have custody or care over J., stating that "[i]t wasn't planned for Tremaine to have any responsibility to take care of the kids when they decided to go on the trip. And I believe [J.'s] mother was pretty adamant that she was relying on [T.'s mother]." The State disagreed, arguing that the evidence showed "[y]ou have a 13-year-old that travels across the Bay Bridge, three hours away from her own parents, and she's going with only two adults. These adults travel with her. And as we understand their relationship from the defendant's own mouth, it's one of care and custody."

On this point, the court agreed with the State, finding, in pertinent part, as follows:

> And there is -- there are instructions and there is case law that helps the Court in determining whether or not [J.] was in fact in the care of Mr. Wilson [*i.e.*, Appellant].
>
> And it is -- it's clear to the Court based on [J.'s] mother's testimony that her primary intent was that she was making this arrangement with [T.'s] mother for this trip and that Mr. Wilson was not part of that equation. He was not even a consideration of that equation when it was discussed. But at some

[9] The motion was also renewed and denied at the end of all the evidence, just prior to closing arguments.

point, as I heard the evidence, it was made known at least that Mr. Wilson was along for the trip.

And it is the Court's belief and finding that it is not just one person who is in care of a minor if not in the care of your parents. The State's example was pretty much spot on.

A more simple way to look at it would be if Mr. Wilson had been part of the conversation about the trip, understanding that he and his wife would be driving the minors to the beach, there is an implication that 100 percent of the time that it's not going to be Mrs. Wilson who's going to have care of these children. If he's sharing the driving responsibilities he's going to have greater care of the children than Mrs. Wilson at that time. So what I need to look at is whether or not there is an implied consent for the care of [J.] by Mr. Wilson, the defendant.

His own words were helpful. And while his legal -- certainly he wasn't submitting it as a legal definition, but it's instructing and it's helpful for the Court to know that because words have meaning. And the word care has absolute specific meaning when it comes to a child who is not in the presence of their parents, but in the presence of other adults, especially when they're going on a trip that takes them two to three hours out of the area.

And when you -- when there are multiple adults that are involved in that trip, taking your child across the Bay Bridge to Ocean City, Maryland, there is an implication and an implied consent on both of the parties regarding that care. Unless there is some specific rebuke or rejection of that responsibility, and that is not present in this case, and it is Mr. Wilson's own words on -- through that interview quoting, been in our care prior to Ocean City, suggesting that she was in his care in Ocean City. Quote, our care together, referencing [J.] and he and his wife. She's been in my care, quote. And then defining their relationship as godparent, and actually offered to I guess officially become a godparent, and again, using the words, quote, in our care.

The Court finds at least as to that element of care that the State has met its burden.[10]

[10] The court also found that Appellant sexually abused J.

Because Appellant was tried by the court without a jury, Maryland Rule 8-131(c) provides the standard for appellate review:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

The Supreme Court of Maryland has explained this standard as follows: [11]

> This Court has consistently recognized and applied this rule when reviewing the sufficiency of evidence. *Credible Behavioral Health, Inc., v. Johnson*, 466 Md. 380, 388 (2019); *see also* [*State v. Manion*, 442 Md. 419, 431 (2015)] ("It is simply not the province of the appellate court to determine whether . . . [it] could have drawn other inferences from the evidence[.]").
>
> Maryland appellate courts accordingly adopt a deferential standard when reviewing sufficiency of evidence that asks whether "*any* rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). For the reasons stated more fully herein, we decline to deviate from the deferential sufficiency of the evidence standard of review enunciated in *Jackson*, our jurisprudence, and the Maryland Rules.

State v. McGagh, 472 Md. 168, 193 (2021).

And this Court has similarly stated:

> Where, as here, a case is tried before the court rather than a jury,
>
> > the judgment of the [c]ircuit [c]ourt will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses. . . . [T]he findings of fact of the trial judge must be accepted unless there was no legally sufficient evidence or

[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

> proper inferences therefrom, from which the court could find the accused guilty beyond a reasonable doubt.
>
> *Brown v. State*, 234 Md. App. 145, 152 (2017) (quoting *Dixon v. State*, 302 Md. 447, 450-51 (1985)) (internal citations omitted). Accordingly, "[w]hen reviewing bench trials, we review findings of fact under the 'clearly erroneous' standard, meaning that '[a] finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Id*. (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Issues of law are reviewed *de novo*. *Schmitt*, 210 Md. App. at 496.

Scriber, 236 Md. App. at 344-45.

The Supreme Court of Maryland has made the following observations regarding the "clearly erroneous" standard of appellate review:

> "[W]hen evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial court will not be set aside on the evidence unless clearly erroneous[.]" *State v. Raines*, 326 Md. 582, 589 (1992). We apply this standard "to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt [beyond a reasonable doubt] based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." [*State v. Smith*, 374 Md. 527, 534 (2003)]. In other words, similar to instances involving the presentation of direct evidence, where the determination of the accused's guilt is formed entirely upon the basis of circumstantial evidence, such evidence must permit the trier of fact to infer guilt beyond a reasonable doubt, and must not rest solely upon inferences amounting to "mere speculation or conjecture." [*Smith v. State*, 415 Md. 174, 185 (2010)].

Manion, 442 Md. at 431-32.

After the briefs were filed in this Court, this Court decided *Mohan v. State*, __ Md. App. __, No. 1853, Sept. Term, 2021 (filed February 2, 2023), a case addressing a conviction under Section 3-602(b)(1) of the Criminal Law Article. As this Court noted in *Mohan*, slip op. at 8:

> [Crim. Law] § 3-602(b)(1) designates three discernable classes of persons prohibited from causing sexual abuse to a minor: (1) parents; (2) other persons who have permanent or temporary care or custody of a minor; and (3) other persons who have responsibility for the supervision of a minor.

We further observed that long-standing precedent from our State's highest court has construed the second class—persons who have permanent or temporary care of a minor—to comprise only persons who are standing *in loco parentis* to the minor. In *Mohan*, we said:

> The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland) has previously equated "permanent or temporary care or custody" with an individual who is standing *in loco parentis*. *See Pope v. State*, 284 Md. 309, 322 (1979) ("*Bowers* [*v. State*, 283 Md. 115 (1979)] equates 'permanent or temporary care or custody' with *in loco parentis*, but 'responsibility for the supervision of' is not bound by certain of the strictures required for one to stand in place of or instead of the parent."). Accordingly, we equate "permanent or temporary care or custody" as used in [Crim. Law] § 3-602(b)(1) with the term and meaning of *in loco parentis*.

Mohan, slip op. at 8 n.3.

We look to the description of the term "*in loco parentis*" provided by the Supreme Court of Maryland in *Pope*. As the Latin phrase suggests, "a person *in loco parentis* is 'charged, factitiously, with a parent's rights, duties, and responsibilities'" for a child. *Pope*, 284 Md. at 322 (quoting BLACK'S LAW DICTIONARY (4th ed. 1951)). He or she "'has put himself [or herself] in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption.'" *Id*. at 323 (quoting *Niewiadomski v. United States*, 159 F.2d 683, 686 (6th Cir. 1947)). "It embodies the two ideas of assuming the parental status and discharging the parental duties." *Id*. (quotation marks and citation omitted).

Moreover, "'[t]his relationship involves more than a duty to aid and assist, more than a feeling of kindness, affection or generosity. It arises only when one is willing to assume all the obligations and to receive all the benefits associated with one standing as a natural parent to a child."' *Id.* (quoting *Fuller v. Fuller*, 247 A.2d 767, 770 (D.C. 1968), *appeal denied*, 418 F.2d 1189 (D.C. Cir. 1969)).

And where the person is not the child's parent or legal guardian, there must be "mutual consent, express **or implied**, by the one legally charged with the care of the child and by the one assuming the responsibility." *Id.* (emphasis added). Both the parent and the third person assuming responsibility over the child must demonstrate "'some indication, in some form, of an intention to establish'" an *in loco parentis* relationship. *Id.* at 322 (quoting *Von der Horst v. Von der Horst*, 88 Md. 127, 130-31 (1898)). "It is a question of intention." *Id*. (quotation marks and citation omitted).

The question we must resolve is whether the evidence was sufficient to establish that Appellant stood *in loco parentis* to J. during the overnight Ocean City trip.

In this case, there were conflicting accounts as to whether Appellant ever "cared for" J. on prior occasions. Several witnesses— including J., J.'s mother, and T.'s mother— said he *had not* been previously entrusted with J.'s care. But the evidence also showed that Appellant himself informed Detective Karsnitz that he *had* cared for J., at least with respect to unspecified occasions, and by his own admission, he considered himself "almost like a godparent to [her]."

In its role as fact finder in this bench trial, the trial court considered this conflicting evidence and court found that, although there was no evidence of an express agreement

that Appellant would care for J. on the Ocean City trip, it was implied that Appellant would do so. The court found that the State met its burden of establishing that Appellant had temporary care over J. when he sexually abused her.

To the extent this was a finding of fact or could be considered a mixed question of law and fact, our standard for appellate review of the finding is clear:

> *Appellate courts do not make factual findings or substitute the factual findings they would rather the trial court have made for the non-clearly erroneous factual findings that were made*. In other words, we are not making findings of fact but are making a legal assessment as to whether the trial court's factual finding satisfies the clearly erroneous standard of appellate review.

Hartford Fire Ins. Co. v. Est. of Sanders, 232 Md. App. 24, 39-40 (2017) (emphasis added); *see also Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009) ("When reviewing mixed questions of law and fact, we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law." (quotation marks and citations omitted)).

In considering whether the trial court's view of the weight of the evidence was clearly erroneous, our review is highly deferential:

> A conclusion that a verdict generally or a finding of fact specifically is clearly erroneous is not a wild card that appellate courts may freely play . . . whenever they strongly disagree with a trial judge's fact-finding. If faithfully applied as it has been regularly defined, a clearly erroneous holding should be limited to a situation where, with respect to a proposition or a fact as to which the proponent bears the burden of production, the fact-finding judge has found such a proposition or fact without the evidence's having established a *prima facie* basis for such a proposition or fact. The holding should be confined to situations where, as a matter of law, the burden of production has not been satisfied.

State v. Brooks, 148 Md. App. 374, 398-99 (2002).

Regardless of the trial modality, be it by jury or judge, "the limited question before an appellate court 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." *Darling v. State*, 232 Md. App. 430, 465 (2017) (quotation marks and citation omitted) (emphasis in original), *cert. denied*, 454 Md. 655 (2017). As the Supreme Court of Maryland has explained:

> Indeed, "we are mindful of the respective roles of the [appellate] court and the [trier of fact]; it is the [trier of fact's] task, not the court's, to measure the weight of the evidence and to judge the credibility of witnesses." [*Dawson v. State*, 329 Md. 275, 281 (1993)]. The appellate court gives deference to "a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation[.]" *State v. Smith*, 374 Md. 527, 534 (2003). "We do not second-guess the [trier of fact's] determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). It is simply not the province of the appellate court to determine "whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Smith*, 415 Md. at 184. Such deference is accorded, in part, because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility. *Walker v. State*, 432 Md. 587, 614 (2013).

Manion, 442 Md. at 431.

Indeed, "[a] finding of fact should never be held to have been clearly erroneous simply because its evidentiary predicate was weak, shaky, improbable, or a '50-to-1 long shot.'" *Brooks*, 148 Md. App. at 399. Rather, "[a] holding of 'clearly erroneous' is a determination, as a matter of law, that, even granting maximum credibility and maximum weight, there was no evidentiary basis whatsoever for the finding of fact." *Id*. In reviewing

a claim of clear error, "[t]he concern is not with the frailty or improbability of the evidentiary base, but with the bedrock non-existence of an evidentiary base." *Id*.

In this case, as noted above, the trial court duly considered Appellant's argument that the evidence did not support a finding that he had temporary care of J., and the court found:

> [W]hen there are multiple adults that are involved in that trip, taking your child across the Bay Bridge to Ocean City, Maryland, there is an implication and an implied consent on both of the parties regarding that care. Unless there is some specific rebuke or rejection of that responsibility, and that is not present in this case, and it is Mr. Wilson's own words on -- through that interview quoting, been in our care prior to Ocean City, suggesting that she was in his care in Ocean City. Quote, our care together, referencing [J.] and he and his wife. She's been in my care, quote. And then defining their relationship as godparent, and actually offered to I guess officially become a godparent, and again, using the words, quote, in our care.
>
> The Court finds at least as to that element of care that the State has met its burden.

In this case, Appellant's own inculpatory statements to Detective Karsnitz provided evidence that J. had been in Appellant's temporary care on prior occasions as well as during the family trip to Ocean City. The trial court considered this evidence, as well as the conflicting evidence, and found that there was an implied agreement that Appellant would have temporary care over J. during the trip. The court's ruling was not clearly erroneous, and we hold that the evidence was sufficient to sustain Appellant's conviction of sexual abuse of a minor.[12]

[12] We also note that it is well settled that a verdict may rest upon the testimony of a single witness. *Hourie v. State*, 53 Md. App. 62, 73 (1982) ("In general, the testimony of a single witness, *no matter what the issue* or who the person, may legally suffice as (continued…)

II. Hearsay Evidence Regarding Prompt Complaint of Sexual Assault

Appellant next asserts the court erred in admitting hearsay when it permitted J.'s mother to offer testimony that exceeded the scope of the hearsay exception for a prompt complaint of sexually assaultive behavior. The State responds that the issue was waived for failure to ask for a continuing objection, and is without merit in any event. As will be explained, we conclude that the issue was adequately preserved by Appellant's general objection, and that the trial court erred in admitting some of Mother's hearsay testimony. But, we conclude that the error was harmless in this case because the improperly admitted testimony did not contribute to the judge's verdict of guilty.

In *Bernadyn v. State*, 390 Md. 1, 8 (2005), Judge Irma S. Raker wrote for the Supreme Court of Maryland:

> Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*.

Accord Gordon v. State, 431 Md. 527, 535-36 (2013).

evidence upon which the jury may found a verdict." (quotation marks and citation omitted; emphasis altered from original)), *aff'd*, 298 Md. 50 (1983). And, notwithstanding the legal principle that a conviction may not be supported by an uncorroborated confession of the *corpus delicti*, *i.e.*, the "body of the crime," *Grimm v. State*, 447 Md. 482, 499 (2016), that principle is not applicable here because the *corpus delicti* of this crime was the sexual abuse, not the relationship between the parties. *See Grimm*, 447 Md. at 496 (observing that the *corpus delicti* of the crime of sexual abuse of a minor by a household member is the sexual abuse itself).

Hearsay testimony that is a "prompt complaint of sexually assaultive behavior" may be admitted if it falls under Maryland Rule 5-802.1(d). Maryland Rule 5-802.1 provides, in pertinent part:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> * * *
>
> (d) A statement that is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]

Md. Rule 5-802.1(d).[13]

We have observed that the "'legally sanctioned function"' of the prompt complaint exception is to "'give added weight to the credibility of the victim'" by corroborating the victim's account of the alleged assault. *Choate v. State*, 214 Md. App. 118, 146 (quoting *Nelson v. State*, 137 Md. App. 402, 411 (2001)), *cert. denied*, 436 Md. 328 (2013).

Professor McLain explains the rationale for this hearsay exception in her treatise as follows: "Admission of the fact that a prompt complaint was made will forestall the creation of reasonable doubt in the jurors' minds, simply because they have not heard when the first report of rape was made." LYNN MCLAIN, MARYLAND EVIDENCE STATE AND FEDERAL § 801(2):2 at 305 (3d ed. 2013 and 2022 Supp.).[14]

[13] The State has not argued that J.'s mother's hearsay testimony was admissible in this instance under Maryland Rule 5-802.1(b) as a prior consistent statement.

[14] A common law version of the exception was recognized in Maryland prior to the adoption of the Title 5 Rules of Evidence in 1994. *See Green v. State*, 161 Md. 75, 82 (continued…)

In *Muhammad v. State*, 223 Md. App. 255, 268 (2015), we stated: "The purpose of the exception is fulfilled by allowing the State to introduce, in its case-in-chief, the basics of the complaint, *i.e.*, the time, date, crime, and identity of the perpetrator." We also observed in *Muhammad*: "*The narrative details of the complaint are not admissible*, as they exceed the limited corroborative scope of the exception." *Id*. (emphasis added).

More recently, we again examined the scope of the exception and its limits, and pointed out: "'[A]lthough the earlier case law admitted only the bare fact that the complaint had been made, the restraints have been loosened at least to the point of admitting as well the essential nature of the crime complained of and the identity of the assailant.'" *Vigna v. State*, 241 Md. App. 704, 731 (2019) (quoting *Cole v. State*, 83 Md. App. 279, 293 (1990)), *aff'd on other grounds*, 470 Md. 418 (2020), *cert. denied*, 141 S. Ct. 1690 (2021).

The text of Rule 5-802.1(d) does not expressly limit the narrative details surrounding the "sexually assaultive behavior." On its face, the rule provides that the hearsay statement is admissible if it is: "A statement that is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]"

But cases applying the exception have limited the scope of the details that are admissible under this exception during the State's case-in-chief. *Muhammad*, 223 Md.

(1931) ("[I]f the prosecutrix has testified to a violent assault, the fact of the making of complaint within a reasonable time under the circumstances is original evidence, and may be shown to prevent the inference that the woman did in fact maintain a silence inconsistent with her narrative at the trial[.]").

App. at 268; *see Cole*, 83 Md. App. at 294 (analyzing law prior to adoption of Maryland Rules of Evidence, and observing that "[w]hen a timely complaint of a sexual attack is offered, therefore, in the State's case-in-chief and for this anticipatory, forestalling purpose, it is clear that the more narrative details of the complaint are not admissible").

Recognizing the limits that some cases have imposed on the prompt complaint exception, the State observes in its brief in this case:

> In order for the [witness's hearsay] statement to be admissible, "[t]he victim must testify," the contested statement "must be timely," and the content of the statement itself "may be restricted to the fact that the complaint was made, the circumstances under which it was made, and the identification of the culprit," with the restriction that "recounting the substance of the complaint in full detail" is not otherwise admissible.

(Quoting *Choate*, 214 Md. App. at 146.)

The testimony at issue in this case came in during J.'s mother's direct examination by the prosecutor as part of the State's case-in-chief, as follows:

> Q. [BY PROSECUTOR:] Okay. So we've got the messages and we've got phone calls. Is there anything that you noted that was unusual about the relationship between Tre and [J.]?
>
> A. [BY J.'S MOTHER:] Yes. [J.] told me what had happened, what the incident happened.
>
> Q. Do you know about when she told you?
>
> A. It was -- it was sometime in, like, August.
>
> Q. In August?
>
> A. Yeah. Like, August or September. I can't really remember, but it was around that time.
>
> Q. Of the same year that they went to Ocean City?
>
> A. Yeah. Definitely. Yeah.

Q. So you're saying that [J.] told you about what happened in Ocean City in August or September of 2020?

A. Yes.

Q. Okay. So when [J.] -- **she told you that something happened in Ocean City?**

A. **Yes.**

Q. Okay. And did she identify -- **well, did she tell you what happened?**

A. **Yes. She told me everything that happened**.

Q. **Can you tell me generally what she told you happened?**

A. **She told me that day he had came back** --

[DEFENSE COUNSEL]: **Well** --[15]

[THE COURT]: **Overruled**.

BY [PROSECUTOR]:

Q. **Go ahead. You can answer**.

A. She told me that he had gone out and that he had came back. And he went to the room, he fell from, like, the bunk bed. And then that [T.'s mother] and, like, grandma and everybody knew that he fell off the bunk bed. He left. And then after that came back.

So then they were asleep. And then when they were asleep, that's when he came back and started touching her. Touch her feet. Licked her, actually sucked her I think she said, and touch her legs and touch her arm and then touch her private part. And then got on top of her and tried to kiss her, and then that's when -- I'm sorry.

[15] The State does not contest that defense counsel lodged a general objection at this point. In its brief as Appellee, the State acknowledges: "The trial court apparently understood defense counsel's vocalization ('Well') as an objection, and the State does not contest that is was an objection." *See Bundy v. State*, 334 Md. 131, 144 (1994) (citing cases and stating that the magic words "I object" are not required).

Q. That's okay. Take your time. There's a bottle of water right there if you want to take a drink. And there's also some tissues if you need to.

A. And then she pinched [T.] so she could wake up because she was so scared. And then he got up, and then she tried to -- she ran to the door to lock the door. And then he came back again.

When he came back he was trying to move the knob, but he couldn't open it, so she heard him just say, like, ha, like that kind of -- and then left and didn't come back again.

Q. Did she tell you who the person was that sucked or licked on her toes and legs?

A. Yes.

Q. Who was that?

A. It was him, Tre.

Q. Tremaine Wilson?

A. Yes.

The State initially argues Appellant waived any complaint about this testimony because the objection was "not timely" with respect to the statements made by the witness after defense counsel's objection was overruled. And the State points out that no continuing objection was requested or granted.

Maryland Rule 4-323(a) provides, in part, that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. . . . The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs." *See also* Maryland Rule 5-103(a)(1).

We are persuaded that the hearsay objection is adequately preserved. The transcript reflects that defense counsel objected when the prosecutor asked J.'s mother: "Can you **tell me generally what she told you happened?**" (Emphasis added.) This question sought to elicit hearsay testimony that was not limited in accordance with the topics enumerated as permissible in *Muhammad* and *Vigna*. Although the State asserts that the objection was not timely, no further question was posed by the prosecutor after the court overruled the objection to the question asking J.'s mother to "*tell me generally what she told you happened*[.]" (Emphasis added.) That question invited the witness's narrative answer that went beyond the permissible scope of the exception for a complaint of sexually assaultive behavior.

In *Muhammad*, we reversed the conviction because a detective's testimony exceeded the scope of the prompt complaint exception because the detective's "testimony was not limited to the circumstances in which [the victim] made her complaint of sexual assault to him or that [the victim] had identified the appellant as the perpetrator and given the location, date, and time of the assault." 223 Md. App. at 271. Explaining that conclusion, we pointed to portions of the detective's testimony repeating what the victim had told him regarding things that occurred both before and after the sexual assault. We explained that several details the detective repeated were acts that occurred either before or after the sexually assaultive behavior:

> [Detective Bell] testified that [the victim] told him [1] that the appellant emerged from some bushes and approached her; [2] that he identified himself as a member of BGF; [3] that he put her in a "sleeper hold"; [4] that he forced her into a vacant house; that he told her to "suck his dick"; that she tried to escape by biting his penis; that he beat her around the head; that she defended

> herself by scratching his face; that he pushed her to the ground and beat her more; and [5] that she could not recall anything beyond that point in time until she woke up at Shock Trauma. These details corroborated much more than [the victim's] testimony that she was sexually assaulted by the appellant in a vacant row house on the afternoon of July 21, 2012. Indeed, they corroborated [the victim's] entire narrative of events, from the moment she encountered the appellant on the street to the moment she awoke at Shock Trauma. Detective Bell's testimony about his interview with [the victim] exceeded the bounds of a prompt complaint of sexual assault.

Id. (bracketed numbers added to identify hearsay that exceed the scope of the prompt complaint exception).

Detective Bell's testimony in *Muhammad* included hearsay statements offered to prove that: Muhammad ambushed the victim after emerging from a hiding place; he told the victim he was a member of the BGF gang; he placed the victim in a chokehold and a violent struggle occurred as the victim attempted to flee; and when the victim woke up in the hospital, she had no memory of what happened after being beaten by Muhammad. *Id*.

In contrast, in *Vigna*, the hearsay testimony that was admitted focused squarely on the sexually assaultive behavior of the defendant, an elementary school teacher who was charged with sexually abusing several female students. In this Court, Vigna claimed that the school counselor's testimony about a child's prompt complaint exceeded the scope of the prompt complaint hearsay exception, citing *Muhammad*. *Vigna*, 241 Md. App. at 731. The school counselor (Ms. Sobieralski) testified as follows:

> Ms. Grey walked in and said, [A], please tell Ms. S. what you told me. And she said, you know how everybody loves--this is [A] talking. You know how everybody loves Mr. Vigna? I said, yes. And she said, well he makes me feel uncomfortable. And I said, how so? And she said, when he hugs me he touches my butt. And he makes me sit on his lap, and when I try to get up he doesn't let me.

* * *

> I asked where and when this was happening. And she said when she goes to say goodbye at the end of the day. I asked if anybody else was involved and she said another student[']s name.

Id. at 731-32.

We held that this testimony in *Vigna* was all properly admitted because it "fell well within the limitations to the prompt complaint exception. Ms. Sobieralski's testimony provided the context of the complaint, identified Mr. Vigna as the culprit, and stated the nature of the allegations." *Id.* at 732. Further, "[i]t did not, as Mr. Vigna claims, include a narrative account of A.C.'s abuses at Mr. Vigna's hands." *Id*.

Upon reviewing the testimony of J.'s mother that was admitted pursuant to the hearsay exception for a complaint of sexually assaultive behavior, we note that the essential statements did in fact relate to Appellant's sexually assaultive behavior, and were properly admitted pursuant to Rule 5-803.1(d). But Appellant asserts in his brief that there were some hearsay statements to which J.'s mother was permitted to testify that went beyond the topics we identified as permissible in *Muhammad*. He states:

> Among other things, . . . [J.'s mother] testif[ied] that [J.] told her that: (1) Mr. Wilson went into her room twice; (2) other individuals ("[T.'s mother], . . . grandma and everybody") heard Mr. Wilson fall off the bed; (3) Mr. Wilson "[t]ouch[ed] her feet," sucked her . . . and touch[ed] her legs," "arm," and "private part," and []then got on top of her and tried to kiss her; (4) [J.] pinched [T.] to wake her; (5) [J.] locked the door to keep Mr. Wilson out after he left; and (6) Mr. Wilson tried to get back into the room a third time. . . . In fact, some of these details, for example that Mr. Wilson "tried to kiss" [J.], were absent from [J.'s] own testimony. Thus, as in *Muhammad*, [J.'s mother's] extensive testimony "was not limited to the circumstances in which [J.] made her complaint of sexual assault to [her] or that [J.] had identified the appellant as the perpetrator and given the location, date, and time of the assault." 223 Md. App. at 271.

The mother's testimony about the assaultive behavior that J. had described was clearly admissible with regard to Appellant touching her body in several places, sucking on her body, and getting on top of her. That portion of J.'s mother's testimony "stated the essential nature of the crime," and, as we held in *Vigna*, 241 Md. App. at 731, was properly admitted pursuant to the hearsay exception. As in *Vigna*, that part of the mother's testimony "stated the nature of the allegations" made by the alleged victim. *Id*. at 732. Although Appellant now complains that the detail that "Mr. Wilson 'tried to kiss'" J. was inconsistent with J.'s testimony, that objection was not raised at trial. The other statements attributed to J. in her mother's testimony were largely cumulative of testimony that came in through other witnesses, but in any event, were not pertinent to the trial judge's finding that Appellant had committed the offenses of sexual abuse of a minor, third and fourth degree sexual offense, and second degree assault (of the unwanted touching modality).

In contrast to the excessive hearsay admitted in *Muhammad*, the extra hearsay testimony from J.'s mother was immaterial to Appellant's convictions. In *Muhammad*, the extra details the detective was allowed to repeat included serious criminal conduct: that Muhammad had hidden in bushes and ambushed the victim with the purpose of forcing her into a vacant building where he proceeded to violently beat her to the point of unconsciousness. In Appellant's case, the testimony of J.'s mother saying that J. had told her Appellant was drunk, had fallen off a bed, and had come back to try unsuccessfully to open her bedroom door after she locked him out does not establish any of the elements of the crimes of which Appellant was convicted.

We recognize that the "harmless error" standard, by intent, imposes a high hurdle for affirming a case in which the trial court has committed an error of law. *See Gross v. State*, 481 Md. 233, 256 (2022) (The '"reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.'" (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976))). Here, the evidence that was properly admitted was compelling, and we conclude that any error in permitting J.'s mother to repeat some statements that went beyond the hearsay exception for a prompt complaint of sexually assaultive behavior was harmless. On the record of this case, we are able to declare a belief beyond a reasonable doubt that there is no reasonable possibility that the error contributed to the trial judge's rendition of the guilty verdict.

We note that the court made the following remarks in announcing its verdict:

> So the Court -- first of all, we look to several things in determining credibility. One of the most significant is -- is a person's presence while testifying. Did the person appear to be telling the truth? She is I think 14 years of age now. Her testimony was age appropriate, plus. It was -- you know, it wasn't testimony that -- it was very -- it was compelling testimony. It was credible testimony. It was prepared testimony, but not coached testimony, if you can understand the distinction. And there was nothing that I believed to be fabricated or embellished or dishonest. *And of course her story was consistent with any other version that she may have given*.
>
> I feel comfortable saying that it wasn't a fabricated detailing of events because I am a believer that if you're going to fabricate, if you're going to lie, whatever your motivation is, if you're going to -- if you're willing to come into court and tell a story that isn't true or go to law enforcement and say something that isn't true that compromises the liberty of a person, if you lie, lie good.
>
> If her intent was to get Mr. Wilson in trouble and that these things didn't happen, why wouldn't she say that his hand went under her clothes?

> Why wouldn't she say that he put his body on top of her? She could have said many, many different things that would have been more egregious than the allegations that -- that were made. And I credit that towards the credibility and honesty of her testimony.
>
> In addition, *her testimony was corroborated several times and in many different ways from other witnesses who testified, not the least of which was* [*T.*] who, I agree with the State, if you want to talk about being in the most uncomfortable position. And I hope and pray that whatever the outcome of this case is that she is treated with kindness and understanding about the situation that she was placed in.

(Emphasis added.)

Accordingly, we shall affirm Appellant's convictions.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.