

Circuit Court for Anne Arundel County
Case No. C-02-CR-17-001918

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2484

September Term, 2017

APRIL JOY CARRINGTON

v.

STATE OF MARYLAND

Beachley,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: December 6, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Anne Arundel County, convicted April Carrington, appellant, of detaining her minor child (the “Child”) in another state with the intent to deprive the Child’s lawful custodian of custody. Carrington was sentenced to a term of three years’ imprisonment. In this appeal, Carrington presents three questions for our review, which we have rephrased as¹:

1. Did the trial court err in admitting evidence that Carrington had allegedly tried to murder the Child’s lawful custodian?
2. Did the trial court err in admitting evidence that Carrington had previously failed to comply with prior orders from the circuit court regarding custody of the Child?
3. Was the evidence sufficient to sustain Carrington’s conviction?

Finding no error and the evidence sufficient, we affirm the judgment of the circuit court.

BACKGROUND

Carrington was arrested and charged by way of indictment filed on August 18, 2017, alleging that, on or about November 7, 2014, she had detained the Child in the state of Alabama with the intent of depriving the Child’s lawful custodian, Andre Richards, who

¹ Carrington phrased the questions as:

1. “Did the trial court err in admitting evidence pursuant to Maryland Rule 5-404(b)?”
2. “Did the trial court err in admitting irrelevant and unfairly prejudicial evidence?”
3. “Was the evidence sufficient to sustain the conviction of Appellant?”

lived in Maryland, of custody. In his application for statement of charges, Mr. Richards alleged that the court granted him custody of the Child in November of 2014, and that, despite being made aware of the court’s order, Carrington took the Child to the state of Alabama, where they both remained.

On the first day of trial, but before opening statements, the State informed the trial court that it intended to introduce evidence that Carrington had allegedly fired a weapon at Mr. Richards after he had encountered Carrington during a trip to Alabama in search of the Child. According to the State, the incident was “strong and powerful evidence” that Carrington had intended to deprive Mr. Richards of custody. After defense counsel objected, the court stated that it needed more time and information before making a decision regarding the evidence’s admissibility.

The next day, the court, out of the presence of the jury, questioned Mr. Richards regarding the incident. As part of that testimony, Mr. Richards stated that, in February of 2017, he traveled to Alabama in an attempt to locate the Child. During the trip, Mr. Richards went to Carrington’s home and observed her vehicle parked near the home. Upon looking in the rear of the vehicle, Mr. Richards observed a car seat that he identified as being similar to one he had purchased for the Child. Mr. Richards then left the scene without incident. The following day, Mr. Richards drove to Carrington’s mother’s house, which was also located in Alabama, where he spotted Carrington, who happened to be outside. According to Mr. Richards, Carrington was wearing a baseball hat similar to one he had purchased for the Child. When Mr. Richards drove up to where Carrington was located and tried to speak with her, she “took her gun out” and “fired in the car.” As Mr.

Richards drove away, Carrington’s brother, who happened to be nearby, “started firing at the car too.” Mr. Richards testified that at no point during the incident did he do anything “threatening” towards Carrington. On cross-examination, Mr. Richards admitted that Carrington had previously made allegations that he had physically, verbally, and sexually abused her prior to the incident in question.

Following Mr. Richards’s limited testimony, the court ruled that the evidence was admissible:

All right, just for the benefit of the Defendant, so, she remained at the table while we heard from the counsel, but I wanted her to have the benefit of the Court’s reasoning, which is, obviously, under 404(b), there is very clear sort of three-part analysis that takes place.

Number one is whether it implicates some degree of relevant testimony under what is commonly known as the MIMIC acronym, which is a non-exhaustive list of identity or intent or motive of one is ---, absent of mistake, complete --, et cetera. And this Court does find that it squarely implicates intent.

I thought about it a lot overnight. I read all the case law last night. Some of the evidentiary primers on this area and the intent to deprive is a specific intent required to be proven by beyond a reasonable doubt.

And it is clear that if you believe, if the fact finder concludes, and I am putting some emphases on the word, if. It is not for me to decide. But if the fact finder hears testimony and believes he was down there to recoup his son and/or locate his son and someone unloads a magazine, there could be no stronger evidence of intent, I would think, other than unloading a gun on someone, if you think that that is there.

But I also recognize that defense makes a very good point as well, which is what you are proving is we are not trying that case, that obviously is for a later date in a different sovereignty, a different state, but if you believe that that has relevance, that the --- is true too, which is the defense has been entitled to say well, you are putting that in for the Mens rea of the Defendant and, therefore, I can tell you that the Mens rea, she thought that he had been so abusive or whatever in the past that even if he were going to approach her, he was going to grab her, abduct, and sexually assault her or whatever.

So, I do think it opens the door to a fairly well, to some of that stuff. And so, the burden in some ways shift in a nonlegal sense. I guess I should be careful how I use those words.

But then strategically, [the State] would have to decide knowing that it opens the door to that because it is being led [sic] in for Mens rea they are allowed to introduce that cuts against the grain of the Mens rea and so then some of this comes in.

So, she strategically has her own calculus to apply knowing that the jury will get to hear about unloading a gun in a car that some of the prior allegations of abuse that the Defendant may acknowledge at least exist in the form of allegation. Although, by its --- it sounds as though he is going to say --- allegations.

So, that is my ruling. I have waived [sic] the prejudicial value, I have weighed the probative value and I do find that it is very probative of the intent prong of the MIMIC acronym 404(b) but I recognize also that if you allow it in, you have to allow -- there is a --- of completeness, which is the defense can't just have to take that and eat it, so to speak, they have to be able to counter it if they think it is in good faith proper for them to do so.

The court then called the jury back into the courtroom, and the trial resumed with the evidentiary portion of Mr. Richards's direct examination. Mr. Richards testified that, in 2012, he and Carrington lived together in Maryland and that the Child was born around the same time. He explained that the relationship began to deteriorate just before the birth of the Child and that it ended for good when, on December 2, 2013, Mr. Richards was arrested following an altercation between he and Carrington. According to Mr. Richards, he did not see the Child at any point following his arrest.

Mr. Richards testified that he eventually filed, in the Circuit Court for Anne Arundel County, a petition for custody of the Child and that the court, on July 22, 2014, held a *pendente lite* hearing as part of those proceedings. Mr. Richards testified that Carrington was present at that hearing and that, in the end, the court issued a *pendente lite* order

granting Carrington primary physical custody and Mr. Richards access to the Child pursuant to an access schedule contained in the order. When asked whether he was “granted access” to the Child following the court’s order, Mr. Richards responded, “No.”

At that point in Mr. Richards testimony, defense counsel objected and requested a bench conference. At that bench conference, defense counsel argued that the circumstances of the *pendente lite* order were irrelevant and prejudicial. The trial court ultimately overruled the objection, stating that Carrington’s actions related to the *pendente lite* order were probative of her intent to commit the charged crime.

Mr. Richards continued his direct testimony by stating that Carrington never granted him access to the Child per the terms of the *pendente lite* order. Mr. Richards also stated that, when he returned to the circuit court for a hearing on the merits of his petition for custody, which was held on November 3, 2014, Carrington did not appear. As a result, the court, by way of an order signed on November 7, 2014, granted Mr. Richards full custody of the Child. Despite that order, however, Mr. Richards was unable to physically obtain the Child. Mr. Richards testified that, beginning in 2015, he traveled to Alabama “about three times” per year to look for the Child and that, during one of those trips, he went to a preschool near where Carrington lived and discovered a photograph of the Child hanging on one of the preschool’s walls.

Mr. Richards also testified that, in July of 2016, he returned to the circuit court after Carrington had filed a motion for modification of custody. According to Mr. Richards, Carrington was present at the hearing and testified. Ultimately, Mr. Richards retained custody of the Child. Mr. Richards explained that, despite the court’s refusal to modify the

terms of its November 2014 custody order, Carrington had yet to cede physical custody of the Child.

The State then attempted to introduce into evidence an audio recording from the July 2016 hearing on Carrington’s motion for modification of custody. In that recording, the hearing judge can be heard ordering Carrington to return the Child to Mr. Richards. The recording also captured a portion of Carrington’s testimony, during which she confirmed that the Child was residing with her in Alabama at the time of the hearing. After defense counsel objected to the admission of the recording, the trial court engaged in a lengthy discussion with both parties regarding the recording’s relevance and potential for prejudice. Ultimately, the court found the aforementioned portions of the recording both probative and not unfairly prejudicial.

Following the court’s ruling, Mr. Richards testified regarding the shooting incident that occurred in Alabama in February of 2017. That testimony was substantially similar to the testimony Mr. Richards had previously provided to the court prior to its ruling on the evidence’s admissibility. The State then played the aforementioned portions of the recording from the July 2016 court hearing.

On cross-examination, Mr. Richards admitted that, following the incident that led to his and Carrington’s estrangement in 2013, he was charged with assault and Carrington was hospitalized. Mr. Richards also admitted that the United States Army conducted a military inquisition and found that he had been a negligent parent and that he had physically and emotionally abused Carrington.

At the close of all evidence, defense counsel moved for judgment of acquittal, arguing that the State had not “sufficiently proven that any incident occurred on or about [November 7, 2014,] that Ms. Carrington can be attributed to.” The court denied the motion.

Later, the court instructed the jury on the applicable law, which included a limiting instruction regarding the 2017 shooting incident and an instruction as to the elements of the charged crime:

You have heard evidence that the Defendant committed the crime of attempted first-degree murder in Alabama, which is not a charge in this case.

You may consider this evidence only on the question of intent. However, you may not consider this evidence for any purpose, specifically, you may not consider it as evidence that the Defendant is a bad character or has a tendency to commit a crime.

* * *

Now, I can properly turn my attention to detaining child custodian out-of-state. If a child is under the age of 16 years old, a relative who knows that another person is the lawful custodian of the child may not with the intent to deprive the lawful custodian of the custody of the child having acquired lawful possession of the child, detained [sic] the child in another state for more than 48 hours after the lawful custodian demands that the child be returned. So, let me repeat that.

So, one count consideration by you and is as follows. If the child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not with the intent to deprive the lawful custodian...of the custody of the child, having acquired lawful possession of the child, detained [sic] the child in another state for more than 48 hours after the lawful custodian demands that the child be returned.

Carrington was ultimately convicted. This timely appeal followed.

DISCUSSION

I.

Carrington first argues that the trial court erred in admitting evidence that, on February 20, 2017, she fired a weapon at Mr. Richards’s vehicle. Carrington maintains that the evidence was not “substantially relevant” because it was “too far removed in time” and “much too ambiguous” to be probative in determining her intent on or about November 7, 2014. According to Carrington, her intent in firing at Mr. Richards’s vehicle “could just as easily have been to protect herself against further assault by Richards,” as there was “no direct evidence that [the Child] was anywhere present such that [Carrington] might have feared that Mr. Richards would be able to take him away.” Carrington further contends that, even if the evidence was relevant, its probative value was substantially outweighed by the “prejudicial nature” of the allegation. Carrington maintains that the “criminal propensity inference from attempted murder” was “too compelling to resist” and that the evidence had “nothing to do with [the Child] and everything to do with portraying [her] as a dangerous lawbreaker.”

The State responds that the trial court properly determined that the 2017 shooting was probative of Carrington’s intent in committing the charged crime. The State maintains that Carrington’s attenuation argument is unmeritorious, as there is no time limit for the admission of relevant “other crimes” evidence. The State also maintains that the shooting “did not arise out of some passing, momentary whim on the part of Carrington,” but rather was part of “an ongoing course of conduct that lasted for more than four years” and was directly related to Mr. Richards’s efforts at locating and obtaining the Child. Regarding

any prejudice that Carrington may have suffered as a result of the evidence’s admission, the State contends that such prejudice was outweighed by the evidence’s probative value and was tempered by the court’s limiting instruction to the jury that the evidence could only be used to establish Carrington’s intent in committing the charged crime.

Evidence is relevant if it makes “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.” Md. Rule 5-401. In other words, evidence is relevant if it is both material and probative. “Evidence is material if it bears on a fact of consequence to an issue in the case.” *Smith v. State*, 218 Md. App. 689, 704 (2014). “Probative value relates to the strength of the connection between the evidence and the issue, to the tendency of the evidence ‘to establish the proposition that it is offered to prove.’” *Id.* (citing *Williams v. State*, 342 Md. 724, 737 (1996)). Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402. We review the court’s determination of relevancy under a *de novo* standard. *State v. Simms*, 420 Md. 705, 725 (2011).

Even if legally relevant, however, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” Md. Rule 5-403. “We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors’ evaluation of the issues in the case.” *Smith*, 218 Md. App. at 705. That said, “[w]hat must be balanced against ‘probative value’ is not ‘prejudice’ but, as expressly stated by Rule 5-403, only ‘unfair prejudice.’” *Newman v. State*, 236 Md. App. 533, 549

(2018). Moreover, “[t]o justify excluding relevant evidence, the ‘danger of unfair prejudice’ must not simply outweigh ‘probative value’ but must, as expressly directed by Rule 5-403, do so ‘substantially.’” *Id.* at 555. “This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion.” *Malik v. State*, 152 Md. App. 305, 324 (2003).

“Of course, evidence of a defendant’s prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial.” *Straughn v. State*, 297 Md. 329, 333 (1983); *See also* Md. Rule 5-404(b) (“Evidence of other crimes, wrongs, or acts...is not admissible to prove the character of a person in order to show action in conformity therewith.”). “Maryland Rule 404(b) prohibits other bad acts evidence to protect against the risk that a jury will assume that because a defendant committed other crimes, he is more likely to have committed the crime for which he is on trial.” *Smith v. State*, 232 Md. App. 583, 599 (2017).

“Evidence of other crimes may be admitted, however, if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant’s guilt based on propensity to commit crime or his character as a criminal.” *State v. Faulkner*, 314 Md. 630, 634 (1989). “It is well settled in Maryland that where intent is at issue, proof of a defendant’s prior conduct may be admissible to prove the defendant’s intent.” *Johnson v. State*, 332 Md. 456, 470 (1993); *See also* Md. Rule 5-404(b) (“Evidence of other crimes, wrongs, or acts ... may be admissible for other purposes, such as proof of ... intent[.]”).

When tasked with the decision as to whether to allow “other crimes evidence,” a trial court must undertake a three-step process. *Faulkner*, 314 Md. at 634. First, the court

must determine whether the evidence can be considered an “exception” to the general inadmissibility of other crimes evidence, which is a legal determination that we review *de novo*. *Id.* If any exceptions apply, the court must then decide whether the defendant’s involvement in the “other crimes” can be established by clear and convincing evidence, which we review under a clearly-erroneous standard.² *Id.* at 634-635. Finally, the court must weigh the probative value of the evidence against any undue prejudice, which we review for abuse of discretion. *Id.* at 635.

Against that backdrop, we hold that the evidence at issue – that Carrington fired a weapon at Mr. Richards’s vehicle while he was in Alabama in 2017 – was substantially relevant to a contested issue, namely, Carrington’s intent in committing the charged crime. As part of its burden of proof, the State needed to show that Carrington detained the Child in another state with the intent of depriving Mr. Richards, the Child’s lawful custodian, of custody. Md. Code, Family Law § 9-305(a)(2). Mr. Richards testified that he traveled to Alabama several times a year to look for the Child and that, during the trip in question, he observed a child’s car seat, which was similar to one he had bought for the Child, located in the rear of Carrington’s vehicle. Mr. Richards also testified that, just prior to the shooting, he observed Carrington wearing a baseball hat similar to one he had purchased for the Child. From that evidence, and given Carrington’s admission during the July 2016 hearing that the Child was residing with her in Alabama, a reasonable inference can be drawn that Carrington had possession of the Child at the time of the shooting. Moreover,

² Carrington does not allege that the trial court erred in its finding that the evidence was clear and convincing.

Carrington’s continued reluctance to return the Child to Mr. Richards’s care in the years leading up to the 2017 shooting made it reasonable to infer that her actions during the 2017 shooting were part of that ongoing course of conduct. Thus, the evidence related to the 2017 shooting was legally relevant, as it was both material to and probative of Carrington’s intent in committing the charged crime. *See Bible v. State*, 411 Md. 138, 157-58 (2009) (noting that intent may be proven by circumstantial evidence).

Regarding the arguments raised by Carrington, we remain unpersuaded. “Other crimes” evidence is not *per se* inadmissible simply because it is “removed in time” from the charged crime. *See Hurst v. State*, 171 Md. App. 223, 249 (2006) (rejecting proposed “bright-line rule” regarding the temporal nature of other crimes evidence and stating that “the remoteness of the offense is an item for the trial court’s consideration when engaged in the third step of the analysis, *i.e.*, the probative value of the evidence against the danger of unfair prejudice.”), *rev’d on other grounds by* 400 Md. 397 (2007). Even so, we cannot say that Carrington’s actions during the 2017 shooting were “too far removed in time” to make them irrelevant. *Compare to Williams v. State*, 457 Md. 551, 569 (2018) (holding that the defendant’s 26-year-old battery conviction, which the State offered to rebut the defendant’s character for peacefulness, was “not so old, that it failed to meet the low bar of making ‘any fact that is of consequence to the determination of the action more probable or less probable[.]’”) (quoting Md. Rule 5-401). Moreover, although Carrington’s intent in firing at Mr. Richards’s vehicle may be subject to some innocent or alternate explanation, that does not mean that the evidence is inadmissible. *See Thomas v. State*, 397 Md. 557, 578 (2007) (“Simply because there is a possibility that there exists some

innocent, or alternate, explanation for the conduct does not mean that the proffered evidence is *per se* inadmissible.”). Finally, as previously discussed, there was some evidence produced to suggest that the Child was in Carrington’s possession at the time of the shooting.

We likewise disagree that the evidence’s probative value was substantially outweighed by the danger of unfair prejudice. To be sure, Mr. Richards’s testimony regarding the 2017 shooting may have caused some prejudice to Carrington; however, we cannot say that that prejudice was “unfair” or that it “substantially outweighed” the evidence’s probative value. *See Odum v. State*, 412 Md. 593, 615 (2010) (“It has been said that ‘[p]robative value is outweighed by the danger of ‘*unfair*’ prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case.”) (citations omitted) (emphasis in original). The record shows that the trial court carefully balanced the probative value of the 2017 shooting against the danger of unfair prejudice prior to admitting the evidence. The court then issued a limiting instruction cautioning the jury that it could consider the evidence only as it related to Carrington’s intent in committing the charged crime. Accordingly, we hold that the trial court did not abuse its discretion in admitting the evidence. *See Newman*, 236 Md. App. at 556-57 (“Reversal should be reserved for those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly and outrageously so.”).

II.

Carrington next argues that the trial court erred in admitting evidence related to the July 2014 *pendente lite* hearing and the July 2016 hearing on Carrington’s motion for modification of custody. Carrington maintains that the evidence from the *pendente lite* hearing was irrelevant because there was no evidence that she was detaining the Child in another state at that time and because that evidence was “limited to a period of time occurring before November 7, 2014.” Carrington also maintains that the evidence’s probative value was substantially outweighed by the danger of unfair prejudice because it invited the jury to infer that, because she had violated a court directive in the past, “she probably did so again, as charged in this case.” Regarding the evidence from the 2016 modification hearing, Carrington maintains that that evidence was irrelevant because it did not “shed any appreciable light on what [her] intent might have been on November 7, 2014.” Carrington also maintains that the evidence, and in particular the audio recording in which the hearing judge can be heard admonishing Carrington, was unfairly prejudicial because it was “cumulative” to other evidence and suggested that “a fact-finder, a judicial one at that, had already figured that [Carrington was] not one to comply with custody requirements.”

The State counters that the evidence at issue was relevant because it showed that Carrington knew that another person, *i.e.*, Mr. Richards, was the lawful custodian of the Child. The State contends that there was “strong circumstantial evidence” that the Child was with Carrington in Alabama around the time of the 2014 *pendente lite* hearing and that Carrington’s actions during both hearings established “an ongoing pattern of conduct” that

was relevant to the crime charged. The State also contends that the evidence was not unfairly prejudicial, despite the fact that the evidence related to the 2016 hearing may have been cumulative to other evidence.

We agree with the State that the trial court did not err. Carrington’s participation in the 2014 *pendente lite* hearing and her failure to comply with the circuit court’s subsequent *pendente lite* order made it more likely than not that she intended to deprive Mr. Richards of custody. Likewise, Carrington’s participation in the 2016 modification hearing, during which she admitted that she had possession of the Child in Alabama and was then told by the court to return the Child to Mr. Richards’s care, made it more likely than not that she had detained the Child in another state with the intention of depriving the Child’s lawful custodian of custody.

Moreover, there is nothing in the record to suggest that the evidence’s clear probative value was substantially outweighed by the danger of unfair prejudice. That is, we cannot say that the evidence produced such an emotional response that logic was overcome by “prejudice or sympathy needlessly injected into the case.” *Odum*, 412 Md. at 615. That some of the evidence may have been cumulative to other evidence does not mean that the objected-to evidence is necessarily prejudicial. *Newman*, 236 Md. App. at 551. In fact, we ordinarily will not find reversible error where the essential contents of objectionable evidence has been presented to the jury through other evidence properly admitted. *Berry v. State*, 155 Md. App. 144, 170-71 (2004). In short, the trial court did not abuse its discretion in admitting the evidence.

III.

Carrington’s final argument is that the evidence was insufficient to sustain her conviction because a rational trier of fact could not have found that she committed the crime on or about November 7, 2014. Specifically, Carrington contends that there was no evidence of her intent on or about November 7, 2014; that there was no evidence that she was detaining the Child in another state on or about November 7, 2014; that there was no evidence that she had been made aware of any demand for custody made by Mr. Richards on or about November 7, 2014; and that there was no evidence that she had acquired lawful possession of the Child prior to November 7, 2014.

The State counters that Carrington’s sufficiency arguments were not preserved because none of them were raised at trial when she moved for judgment of acquittal at the close of the State’s case. The State further contends that, even if preserved, Carrington’s argument is without merit.

We disagree with the State that Carrington’s claims are unpreserved. In moving for judgment of acquittal, defense counsel argued at length that the State had failed to prove “that any incident occurred on or about [November 7, 2014,] that Ms. Carrington can be attributed to” and that the State had failed to show that Carrington had acted with the requisite intent. When the trial court denied the motion, it stated that there was “ample evidence by which the fact finder, that is the jury, could conclude beyond a reasonable doubt that [Carrington] did have the reckless intent and satisfy [sic] the other elements as well.” From that, it is clear that defense counsel was arguing that the State had failed to establish the elements of the crime as they pertained to Carrington’s actions and intent on

or about November 7, 2014. Given that those grounds are essentially the same as those raised here, we consider Carrington’s claims preserved. *Jones v. State*, 213 Md. App. 208, 215-16; Md. Rule 4-324(a). We now turn to the merits of Carrington’s claims.

“The test of appellate review of evidentiary sufficiency is 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.’” *Donati v. State*, 215 Md. App. 686, 718 (2014) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That same standard applies to all criminal cases, “including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witness accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “[t]he test 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.’” *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’” *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]’” *Neal*, 191 Md. App. at 314 (citations omitted).

Carrington was charged pursuant to Section 9-305(a)(2) of the Family Law Article of the Maryland Code, which states:

If a child is under the age of 16 years, a relative who knows that another person is the lawful custodian of the child may not, with the intent to deprive the lawful custodian of the custody of the child ... having acquired lawful possession, detain the child in another state for more than 48 hours after the lawful custodian demands that the child be returned[.]

We hold that the evidence was sufficient to sustain Carrington’s conviction. Mr. Richards testified that he and Carrington had the Child in 2012, that Carrington obtained lawful possession of the Child in 2014, and that he filed for custody of the Child that same year. Mr. Richards also testified that, although he was ultimately awarded full custody by the circuit court in November of 2014, Carrington had yet to make the Child available to him. Additional evidence was adduced that, in 2016, Carrington filed a motion for modification of custody and that, at a hearing on that motion, Carrington admitted that she had possession of the Child in Alabama. At that hearing, Carrington was told by the court to produce the Child. Carrington once again failed to return the Child to Mr. Richards, who remained the Child’s lawful custodian and continued to demand his return. According to Mr. Richards, in 2017 he traveled to Carrington’s home in Alabama to look for the Child and observed a car seat similar to one he bought for the Child sitting in the backseat of Carrington’s vehicle. During that same trip, Mr. Richards also observed Carrington wearing a baseball hat similar to one he had purchased for the Child. Mr. Richards testified that, when he tried to speak with Carrington, she brandished a firearm and fired several shots in his direction. Mr. Richards also testified that, during a prior trip to Alabama, he located a picture of the Child hanging in a preschool near where Carrington lived. From that evidence, a reasonable inference can be drawn that Carrington had obtained lawful possession of the Child and, knowing that another person was the Child’s lawful custodian

and intending to deprive that custodian of custody, had detained the Child in another state for more than 48 hours after the lawful custodian demanded that the Child be returned.

As noted, Carrington argues that the evidence was insufficient because the State failed to show that she committed the crime on or about November 7, 2014, which was the date listed in the indictment. The Court of Appeals has made clear, however, “that, because the date of an offense generally is not an element of the offense, a variance between the time period alleged in the indictment and the proof at trial is not fatal to a conviction.” *Reece v. State*, 220 Md. App. 309, 333 (2014). In other words, “the time period proven need not coincide with the dates alleged in the charging document, so long as the evidence demonstrates that the offense was committed prior to the return of the indictment and within the period of limitations.” *Id.* at 333-34 (quoting *Crispino v. State*, 417 Md. 31, 51-52 (2010)). Here, the indictment was returned on August 18, 2017. Moreover, because the Child was out of Mr. Richards’s custody for more than 30 days, the charged crime is considered a felony and, therefore, has no statute of limitations. Md. Code, Fam. Law § 9-307(c); *See also Clark v. State*, 364 Md. 611, 626 n 8 (2001) (noting that Maryland has no statute of limitations on felonies). Thus, the State merely needed to prove that Carrington committed the crime at some point prior to the indictment, which, as previously discussed, it did.

Even so, sufficient evidence was presented to establish that Carrington committed the crime on or about November 7, 2014. Carrington was well-aware of and had participated in the court proceedings related to Mr. Richards’s complaint for custody. During those proceedings, Mr. Richards made various “demands” for custody, and the

court ultimately granted him access to the Child by way of a *pendente lite* order dated July of 2014. In that same order, Carrington was granted primary physical custody of the Child. Then, in November of 2014, Mr. Richards was granted full custody, and, although Carrington did not attend those proceedings, a copy of the custody order was filed by the court that same month. Although the record does not disclose Carrington's or the Child's whereabouts in November of 2014, Mr. Richards testified that he began traveling to Alabama in 2015 to look for the Child and that, during several different trips, he found circumstantial evidence that the Child resided there. In 2016, Carrington admitted having possession of the Child in Alabama. Finally, at no time before or after November 7, 2014, did Carrington make the Child available to Mr. Richards. From those facts, a reasonable inference could be drawn that, on or about November 7, 2014, Carrington had the Child in Alabama; that she knew that Mr. Richards had demanded custody; that she knew that Mr. Richards had become the Child's lawful custodian; and that she intended to keep the Child in Alabama in order to deprive Mr. Richards of custody.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**