Circuit Court for Caroline County
Case No. C-05-CR-18-000052

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2809

September Term, 2018

WILLIAM EDGAR ROBINSON, JR.

V.

STATE OF MARYLAND

Arthur,
Shaw Geter,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 18, 2019

Following a two-day bench trial in the Circuit Court for Caroline County, appellant William Edgar Robinson, Jr., was convicted of three counts of third-degree sexual offense, three counts of fourth-degree sexual offense, three counts of child sexual abuse, three counts of second-degree assault, and two counts of second-degree rape.

The court sentenced appellant to a total of 80 years of incarceration: 40 years for second-degree rape, a consecutive 10-year term for third-degree sexual offense, and another consecutive 30-year term for child sexual abuse. The remaining convictions were merged for sentencing purposes. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presented five questions for our review, which we have condensed and rephrased as follows:

1. Did the trial court err by permitting A.[1] to testify about her recollection of a conversation with appellant, when A. had recorded the conversation without appellant's consent, and the recording itself was therefore inadmissible?

2. Did the trial court err by admitting portions of A.'s video-recorded interview with the police?

3. Did the trial court err or abuse its discretion in its rulings on the State's alleged discovery violations?

4. Was the evidence legally insufficient to support the trial court's verdict? [2]

[1] Because of the sensitive nature of this case, we refer to A., the victim of sexual abuse, by her initial.

[2] Appellant formulated the questions as follows:

1. Did the trial court err when it failed to suppress testimony disclosing the Appellant's communications after granting the Motion to suppress the recording of those communications?

For the reasons set forth below, we answer each question in the negative and affirm the convictions.

BACKGROUND

A. was born in 2000. When she was in second grade, A. began residing with her grandparents, appellant and his wife. Appellant and his wife took full legal custody of A. when she was in the third grade.

Ordinarily, appellant's wife would go to her parents' house once a week. On those days, appellant would pick up A. from school and bring her home, where they would be alone together. Appellant used these occasions to sexually abuse A. The abuse occurred over the course of three discrete periods of time.

Starting when A. was around eight years old and in the third grade until she was in the fourth grade, appellant would sit on the couch and make A. completely undress in

2. Did the trial court err when it admitted the recording of [A.]'s interview when it contained evidence previously suppressed and she was available to testify?

3. Did the trial court err when it admitted the testimony of [A.] not previously disclosed in discovery?

4. Is the Appellant entitled to a new trial due to the prejudice caused by the admission of [A.]'s testimony regarding the Appellant's alleged confessions; the admission of [A.]'s recorded statements that included the previously suppressed evidence; and the admission of [A.]'s testimony regarding matters not disclosed in discovery?

5. Did the State produce sufficient credible evidence to find the Appellant guilty beyond a reasonable doubt of each particular charge?

front of him. He would then make her sit on his lap, naked, with her legs touching his clothed penis.

Beginning when A. was nine or 10 years old and in the fourth grade, appellant would make A. engage in the same conduct, but would "put his hands on either side of [her] leg and move [her] back and forth" over his erect penis until she was told to get up.

On a weekly basis, from when A. was 10 or 11 years old and in the fifth grade onward, appellant would instruct A. to "dress up" for him in provocative undergarments when she arrived home from school. Appellant would meet A. in his bedroom, where he would lie naked on his bed next to A. while he touched A.'s breasts and vagina with his hands. He would also put his penis in A.'s mouth and vagina.

On December 27, 2017, when A. was a 17-year-old student at a small private school, she told appellant that she was not "going to do it anymore," and appellant told her that she "could leave." A. left a note saying she had confided in her boyfriend and his mother and that she could not "let [appellant] continue" because she had taken "all [she] c[ould] take." "I cannot live like this and be scared all the time," she wrote.

A. stayed with her boyfriend and his mother for a few days. During that time, A., her boyfriend, and her boyfriend's mother met with the principal of A.'s private school and with appellant and his wife. In the meeting, A. disclosed that appellant had been sexually abusing her. The meeting eventually ended without a resolution after the principal rejected A.'s suggestions about other families with whom she could live. A few

days after the meeting, the boyfriend's mother sent A. home, instructing her not to be alone with appellant at any time.

On January 14, 2018, A.'s boyfriend confronted appellant about the abuse, and appellant replied that "nothing was going to happen again." Later that day, while appellant and A. were alone in a car, appellant told A. that if she would "guarantee that he wouldn't go to jail," he "would confess" and "would say that he had fondled [her], screwed [her]."[3] Days later, appellant told the boyfriend's mother that he was sorry for what he had done, but that "it was all [A.]'s fault what had happened," because she had come into the bathroom wearing no clothes while he was there. He admitted that "it had been two months since he had touched her" and said that "he was going to go see a psychiatrist."

On January 20, 2018, A. moved in with a concerned teacher at her school and with the teacher's family. That night, the teacher, A.'s boyfriend, and her boyfriend's mother accompanied A. to a police station, where she reported the offenses to a police officer.

Appellant waived his right to a jury trial. Following a bench trial in the Circuit Court for Caroline County, he was convicted of 14 counts.[4] Appellant noted this timely appeal.

[3] As addressed below, A. recorded parts of this conversation on her cell phone without appellant's knowledge or consent. While the actual recording was suppressed, A.'s account of appellant's statements was not.

[4] Counts 1 through 4 concerned conduct that occurred on or about January 1, 2009, when A. was eight or nine years old. Counts 5 through 8 and Count 16 concerned offenses that took place from 2011 through 2013, when A. was between 10 and 13 years

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I. Testimony About Contents of Illegally Recorded Conversation

On January 14, 2018, A. used her cell phone to record two, 20- to 30-second snippets of a conversation in which appellant made incriminating statements. It is undisputed that the recordings were made without appellant's knowledge or consent.

Before trial, appellant moved to suppress the recordings and their contents, claiming that they were made in violation of the Maryland Wiretap and Electronic Surveillance Act, Md. Code Ann., Cts. & Jud. Proc. ("CJP") §§ 10-401 to -414 (1974, 2013 Repl. Vol., 2018 Supp.). The State countered that even if the recording itself was inadmissible at trial, A. should still be allowed to testify from memory as to statements made during the conversation.

The trial court ordered that the recording be suppressed because it was made without appellant's knowledge. The court, however, declined to suppress A.'s testimony about the statements as long as appellant's statements were "otherwise admissible." The court relied on *Aud v. State*, 72 Md. App. 508 (1987), which held that the Wiretap and Electronic Surveillance Act does not prohibit witnesses from testifying from memory

old. Counts 9 through 11 and Count 14 concerned offenses that took place from 2014 through 2017, when A. was between 13 and 17 years old.

about incriminating statements that a defendant made in a conversation that was illegally recorded.

On appeal, appellant asserts that the trial court erred by allowing A. to testify from memory about appellant's admissions. He maintains that *Aud* misinterpreted the statute.[5]

Here, we examine the trial court's interpretation of the scope of the Wiretap and Electronic Surveillance Act. The interpretation of a statute is a question of law, which this Court reviews de novo. *See, e.g.*, *Shealer v. Straka*, 459 Md. 68, 80 (2018).

The Wiretap and Electronic Surveillance Act makes it unlawful to "[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." CJP § 10-402(a)(1). The statute defines "intercept" to mean "the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." CJP § 10-401(10). In general, "whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial." CJP § 10-405(a). There is no dispute that A. willfully intercepted oral communications with appellant.

[5] The recordings were not admitted at the suppression hearing and are not part of the record on appeal. For that reason, it is unclear which, if any, of the recorded admissions were the subject of A.'s testimony at trial. Consequently, it is unclear whether A. actually testified about any of the admissions on the recordings. In light of that uncertainty, we could conclude that appellant has not adequately preserved this issue for appeal. Nonetheless, we shall assume for the sake of argument that A. testified about at least one admission that had been captured on the recording.

More than 30 years ago, this Court analyzed nearly identical statutory language to determine whether it prohibited witnesses from testifying about their recollection of what a defendant said in an illegally recorded communication. We held that it does not. *Aud*, 72 Md. App. at 520.

In *Aud*, 72 Md. App. at 518, an undercover police officer recorded a conversation involving himself, Aud, and a third person without their consent and without prior judicial approval. Before a grand jury, the State did not offer any evidence about the illegal recording. *Id.* at 519. Instead, the trooper and the third person testified to what they had personally heard in their conversation with Aud. *Id.* They testified similarly at trial. *Id.* Aud appealed his subsequent conviction, arguing that the trial court "erred in admitting testimony as to conversations illegally intercepted and recorded." *Id.* at 518. Like appellant, Aud claimed that the witnesses were "precluded from testifying as to what they personally heard [him] say" in their conversation because it was "unlawfully electronically intercepted." *Id.* at 520.

This Court disagreed with Aud's interpretation of the statute, stating that "[n]either the Fourth Amendment . . . nor the Maryland Electronic Surveillance and Wiretap Law protect a person from the possibility that one in whom he or she confides will violate that confidence." *Id.* (footnote omitted) (citing *Hoffa v. United States*, 385 U.S. 293 (1966)). Accordingly, even though the recording itself was inadmissible, the statute did not bar the "admission of the trooper's testimony concerning his auditory reception of the

conversation." *Id.*; *accord* 6 Lynn McLain, *Maryland Evidence: State and Federal* § 514:1, at 307 n.32 (3d ed. 2013).

Appellant asserts that *Aud* should not control in this case. He contends that *Aud*'s distinction between the recording of a conversation and a witness's recollection of the conversation renders CJP § 10-405(a) "pointless" and is "contrary to the plain language of the statute." We are not persuaded. Section 10-405(a) generally prohibits the introduction of a recording of a communication and of evidence derived from such a recording if it was made without the consent of all involved. The purpose of the statute is to deter and punish the surreptitious recording of private communications. The statute, however, does not prohibit the introduction of evidence of the communications themselves, as long as that evidence is not derived from an illegally recorded communication and is otherwise admissible. A.'s testimony satisfies those criteria, because she testified from memory, and because appellant's statements were "otherwise admissible" at trial (as provided in the suppression order) under Md. Rule 5-803(a) as statements of a party-opponent.

In addition to arguing that we should not follow *Aud*, appellant points to factual dissimilarities between *Aud* and this case. He argues that "unlike *Aud*, there was no third party present and as such, [appellant] had an expectation of privacy." We disagree. Appellant had no reasonable expectation that A. would refrain from ever telling others what she remembered about what he said in their conversation. *See Hoffa v. United States*, 385 U.S. at 301-02.

If anything, this case presents a stronger argument than *Aud* did for admitting testimony about the conversation. In *Aud*, 72 Md. App. at 519, the recording was made by a state agent as part of an investigation of an offense that was "not one of the enumerated crimes for which the Legislature has permitted the police to intercept communications or conversations *sans* a warrant or consent." Here, A., a private citizen, made the cell phone recording because appellant had been sexually abusing her for years, but no one believed her or was willing to help her. This distinction removes any concern about Fourth Amendment violations by law enforcement or the use of "fruit of the poisonous tree" at trial.

II. Video-Recording of Interview

Appellant argues that the trial judge erred in admitting and reviewing a video-recording of the police officer's interview with A. According to appellant, the video was inadmissible because it contained inadmissible hearsay, its admission deprived him of his Sixth Amendment right to confront and cross-examine the witnesses against him, and it "contained evidence previously suppressed." The State responds that appellant did not adequately preserve this point for review. Alternatively, the State argues that, if the issue was preserved for review, the trial judge properly admitted the video for non-hearsay purposes.

As part of the State's case-in-chief, a police officer testified about his recorded interview with A. on January 20, 2018, the evening when she first reported her sexual abuse allegations to the police. The officer began his testimony by explaining that he had

attended a week-long course in "ChildFirst" forensic interviewing, where he was trained on techniques for interviewing minor victims of alleged sexual abuse.[6] He stated that when he first met A. at the police station, she was "sorrowful" and "tearful." The officer testified that during his interview with A., she told him that appellant had had sexual intercourse with her on December 27, 2017, the day when she first attempted to move out of his house.

Defense counsel objected to the officer's final statement on hearsay grounds. The prosecutor responded that the report of sexual intercourse was admissible under the hearsay exception for a prompt report of sexually assaultive behavior. *See* Md. Rule 5-802.1(d); *Gaerian v. State*, 159 Md. App. 527, 545 (2004) (quoting *Nelson v. State*, 137 Md. App. 402, 418 (2001)) (stating that, in determining whether a complaint is sufficiently prompt, a trial court "should consider whether the complaint is prompt as 'measured by the expectation of what a reasonable victim, considering age and family

[6] "ChildFirst," formerly called "Finding Words," teaches the RATAC protocol for child forensic interviewing developed by Cornerhouse Child Advocacy Center. The ChildFirst program "is designed to produce competent forensic interviewers who can perform neutral, fact-finding interviews that help children describe their experiences." Jennifer Anderson, et al., *The Cornerhouse Forensic Interview Protocol: RATAC*, 12 T.M. Cooley J. Prac. & Clinical L. 193, 195 (2010). The RATAC protocol includes five elements: (1) Rapport, (2) Anatomy Identification, (3) Touch Inquiry, (4) Abuse Scenario, and (5) Closure. *Id.* at 202. The RATAC protocol promotes the use of media by the interviewer during the rapport stage, followed by "asking young children to provide names for body parts using anatomically detailed drawings, and discussing touches as the primary method for introducing the topic of suspected abuse with children under age 10. RATAC instructors encourage interviewers to consider the appropriateness of using anatomical dolls as demonstration aids following a child's verbal disclosure of sexual abuse." Patti Toth, *Comparing the NICHD and RATAC Child Forensic Interview Approaches—Do the Differences Matter?*, APSAC Advisor 15 (Fall 2011).

involvement and other circumstances, would probably do by way of complaining once it became safe and feasible to do so'").

The trial judge declined to address the promptness of A.'s reporting at that time, stating that the issue was "slightly premature." Instead, the judge ruled that the officer could "testify at this point," but that he "might entertain *a later motion to strike* [the testimony], depending on how it goes." (Emphasis added). Thereafter, the officer continued to testify about specific statements that A. made to him regarding the sexual abuse. Defense counsel did not voice a hearsay objection to the admission of any of these statements.

On cross-examination, defense counsel questioned the officer about his lack of adherence to the ChildFirst protocol and insinuated that he asked A. leading questions by supplying her with definitions of "vaginal intercourse" and "ejaculation" during their interview. Counsel then inquired about A.'s demeanor, suggesting that the recording showed that A. "was actually rather cheery in the beginning of the interview." Finally, counsel elicited testimony that A. had reported that appellant began engaging in sexual intercourse with her when she was in the sixth or seventh grade.

On redirect examination, the State asked the officer whether A. had given her own definition of "vaginal intercourse." Defense counsel objected on the ground that the question was outside the scope of cross-examination. At that point, the trial judge interjected that if the video was going to be moved into evidence, he did not need to hear more about who said what, because he would get to see it first-hand. The State then

moved the video into evidence under the rule of completeness (*see* Md. Rule 5-106; *see also Otto v. State*, 459 Md. 423, 448-52 (2018)) and under the theory that it was the best evidence of how the interview was conducted. *See generally* Md. Rule 5-1002; *Forrester v. State*, 224 Md. 337, 349 (1961) (assuming that the recording of a conversation is the best evidence of what was said in the recorded conversation); *McGuire v. State*, 200 Md. 601, 606 (1952) (same); *State v. Cabral*, 159 Md. App. 354, 385 (2004) (assuming that a video-recording was the best evidence of what occurred in a traffic stop).

Defense counsel made the following objection to the admission of the video-recording:

> [Defense counsel]: Well, it would have been fine if the State . . . just entered the videotape in the beginning. Now it becomes duplicitous and certainly what it is is an attempt now, after the direct examination has already occurred and now on redirect he's going to try to enter the videotape as evidence, which I think is outside of the cross examination and shouldn't be allowed, number one. Number two, it's duplicitous and then number three is it's untimely.

The trial court originally reserved on the admission of the video, but after hearing additional redirect examination and objections, it admitted the evidence. The court explained that, "given the nature of the questions . . . there seems to be enough questions cast and distinctions drawn that at this point [the video] probably would represent the best evidence." The video was not actually entered into evidence until much later in the trial, after A. had testified.

We first address appellant's claim that the video was erroneously admitted because it contained inadmissible hearsay. The only hearsay objection that defense

counsel made at trial was to the officer's *testimony* about A.'s report of sexual conduct that occurred on December 27, 2017. He has not raised that issue on appeal.[7]

Appellant objected to the admission of the video, but did not object on hearsay grounds. Rather, he objected only on the grounds that it was duplicitous, that it was outside the scope of cross-examination, and that its admission was untimely. By stating specific grounds for his objection to the video, appellant waived all other grounds on appeal, including his current hearsay claim. *Klauenberg v. State*, 355 Md. 528, 541 (1999).

Even if appellant had not waived his hearsay claim, the error, if any, in admitting the video would be harmless because the same statements were admitted without objection (or were solicited by appellant) during the officer's testimony. *See Yates v. State*, 202 Md. App. 700, 709 (2011) (recognizing that Maryland appellate courts have found "the erroneous admission of evidence to be harmless if evidence to the same effect was introduced, without objection, at another time during the trial"), *aff'd*, 429 Md. 112 (2012); *Berry v. State*, 155 Md. App. 144, 170 (2004) (stating that "[w]e shall not find reversible error when objectionable testimony is admitted if the essential contents of that

[7] Nor could he. Appellant did not move to strike the officer's testimony even though the court expressly offered to consider one. Moreover, appellant did not object to the officer's additional testimony about other statements by A., and he himself elicited testimony about A.'s statements to the officer. For this additional reason, any claim that those same statements were hearsay is waived. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection[]").

objectionable testimony have already been established and presented to the jury without objection through the testimony of other witnesses").

We turn next to appellant's related contention that the admission of the video deprived him of his Sixth Amendment right of confrontation. This argument is without merit. "[W]hen the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his [or her] prior testimonial statements." *Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004). Thus, the Confrontation Clause "does not bar admission of a statement so long as the declarant is present at trial to defend or explain it." *Id.*

In this case, both of the declarants in the video, the police officer and A., testified at trial and were subject to cross-examination. Therefore, the trial court did not violate appellant's right of confrontation by admitting the video of the interview into evidence. *See State v. Coates*, 405 Md. 131, 135 n.3 (2008); *Lawson v. State*, 389 Md. 570, 588-89 (2005).

Finally, we address appellant's argument that the trial court erred in admitting the video because it included evidence that had been suppressed. The record indicates that, during her interview with the officer, A. mentioned that she had a cell phone recording of a conversation with appellant, but she did not play the recording. The trial judge stated that he was, as the trier of fact, "judicially ignoring the fact that there even was this other recording in the first place." Furthermore, defense counsel objected only to a reference to

the cell phone recording that was in the third part of the interview, yet the trial court stated that it did not review the third portion for that very reason.

In short, we find appellant's claim meritless. There is ample documentation in the record that the video did not include evidence that the court previously suppressed. To the extent that it did, the court did not watch that portion of the interview.

III. Discovery Challenge

Appellant contends that the trial court erred in admitting five statements that A. made during trial, because, he says, the evidence had not been disclosed in discovery. The State responds that, as to three of those statements, appellant's claims are "almost entirely unpreserved." The remaining two statements, the State observes, were not admitted at trial and therefore could not have prejudiced appellant.

Maryland Rule 4-263(d) concerns the State's disclosure obligations in criminal case. "As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony," Rule 4-263(d)(3) requires the State to disclose "(A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, § 11-205 or Rule 16-912 (b), the address and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the witness that relate to the offense charged." The term "written statement" includes "the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person." Md. Rule 4-263(b)(6)(B).

Although appellant does not specifically cite Rule 4-263(d)(3), he appears to contend that the State violated that rule.

Under Rule 4-263(n), a court may not award discovery sanctions until it finds that a failure of discovery has occurred. The appellate courts conduct a de novo review of whether a discovery violation occurred. *See Cole v. State*, 378 Md. 42, 56 (2003). But the remedy is, "in the first instance, within the sound discretion of the trial judge." *Williams v. State*, 364 Md. 160, 178 (2001). The trial judge's exercise of that discretion includes determining whether a discovery violation has caused prejudice. *Id.*

Appellant alleges discovery violations with respect to A.'s testimony (1) that he digitally penetrated A.'s vagina, (2) that he expected A. to dress up for him, (3) that he grounded A. or restricted her cell phone use if she did not comply with his orders, (4) that A. received lingerie from Victoria's Secret in her Easter eggs when she was in fifth or sixth grade, and (5) that A. told her grandmother (appellant's wife) about the suppressed recordings. We address the admission of each piece of evidence individually.

First, when A. testified that appellant digitally penetrated her vagina, defense counsel did not object on any grounds. It is well established that an objection is "'waived'" unless a party objects "'at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent.'" *State v. Jones*, 138 Md. App. 178, 218 (2001) (quoting Md. Rule 4-323(a)), *aff'd*, 379 Md. 704 (2004); *see also* Md. Rule 5-103(a)(1) (error may not be predicated upon ruling that admits evidence unless

party is prejudiced by ruling, and timely objection appears in record). Accordingly, this issue is not preserved for appellate review, and the alleged violation is not before us.

Second, after A. testified that appellant expected her to dress up for him in a bra and underwear, appellant waited for A. to answer five more questions, including the question about the lingerie in the Easter eggs, before objecting. The issue is unpreserved, because the objection was not "made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." Md. Rule 4-323(a); *see Fowlkes v. State*, 117 Md. App. 573, 587-88 (1997).

Even if appellant had preserved his objections to these first two items of testimony, we would find no error or abuse of discretion. Rule 4-263(d)(3), on which appellant appears to rely, requires the State to disclose a witness's "written" statements. We have no indication that the State failed to disclose a written statement (or the substance of a statement embodied in a writing or recording) in which A. asserted that appellant digitally penetrated her vagina or that appellant expected her to dress up for him in a bra and underwear. Therefore, we have no reason to conclude that the State violated its discovery obligations with respect to those two aspects of A.'s testimony.

Appellant did preserve an objection to A.'s testimony that if she did not comply with his sexual demands, he would restrict A.'s cell phone use or ground her. Nonetheless, the court did not err or abuse its discretion in overruling the objection. As with the first two items of testimony, we have no indication that the State failed to disclose a written statement (or the substance of a statement embodied in a writing or

recording) in which A. asserted that appellant would restrict her cell phone use or ground her if she did not comply with his demands. Again, therefore, we have no reason to conclude that the State violated its discovery obligations.

Finally, appellant complains that the court erred in admitting A.'s allegedly undisclosed statements that she received underwear inside of her Easter eggs and that she told her grandmother about the suppressed recordings. In fact, the trial court did not admit those statements. Rather, the court sustained appellant's objections to both statements and struck both pieces of evidence from its consideration. Accordingly, appellant has failed to establish any error, let alone any prejudicial error. *See State v. Hutchinson*, 260 Md. 227, 236 (1970) (stating that "we have consistently reposed our confidence in a trial judge's ability to rule on questions of admissibility of evidence and to then assume the role of trier of fact without having carried over to his factual deliberations a prejudice on the matters contained in the evidence which he [or she] may have excluded"); *State v. Babb*, 258 Md. 547, 550 (1970) (stating that "[t]he assumed proposition that judges are men [and women] of discernment, learned and experienced in the law and capable of evaluating the materiality of evidence, lies at the very core of our judicial system"); *Patterson v. State*, 227 Md. 194, 197 (1961), *cert. granted, judgment vacated on other grounds*, 372 U.S. 776 (1963) (explaining that in a non-jury trial, it is presumed that the judge considered only admissible evidence and discarded inadmissible evidence in reaching his conclusion).

IV. Sufficiency of the Evidence

Appellant contends that there is insufficient evidence to support his convictions. We disagree.

The standard of review for determining whether the evidence was sufficient to support a criminal conviction on appeal 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." *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When this Court assesses the sufficiency of the evidence in a non-jury trial, we give "due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *State v. Albrecht*, 336 Md. 475, 478 (1994). Our only concern is whether the verdicts were supported with "evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Id.* at 478-79.

Viewing the evidence in a light most favorable to the State, we conclude that the trial judge could have reasonably found that appellant committed the offenses for which he was convicted.

First, we dispose of appellant's general evidentiary complaints, including his complaints that A. was not credible, that there were inconsistencies in the evidence, that A.'s testimony was uncorroborated, and that she was unspecific about when the sexual

abuse occurred. It is not within the purview of this Court to assess credibility or to resolve conflicts in the evidence. *State v. Albrecht*, 336 Md. at 478. Similarly, we do not address whether A.'s testimony was corroborated, because the testimony of a victim does not require corroboration. *Branch v. State*, 305 Md. 177, 183 (1986). Finally, A. testified that appellant sexually abused her on a weekly basis, whenever her grandmother was out of the house, from the time when she was eight years old in third grade until she was a seventeen-year-old senior in high school. The evidence of regular sexual abuse was, therefore, sufficient to support the trial judge's finding that the offenses occurred when A. was eight or nine years old (Counts 1 through 4), when A. was between 10 and 13 years old (Counts 5 through 8 and Count 16), and when A. was between 13 and 17 years old (Counts 9 through 11 and Count 14).

Next, we address appellant's specific claim that the evidence was insufficient to support his convictions for committing a third-degree sexual offense during the years before A. turned 14. Under Md. Code Ann. (2002, 2012 Repl. Vol.), § 3-307(a)(3) of the Criminal Law Article ("CL"), a person commits a sexual offense in the third degree if he or she "engage[s] in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim."

Appellant appears to contend that there was insufficient evidence to prove that he had "sexual contact" with A. We are not convinced.

Sexual contact is defined as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of

either party." CL § 3-301(e)(1). At trial, A. testified that, starting when she was seven or eight years old and in the third grade, appellant made her undress in front of him and sit on his lap with her genitals touching his clothed penis. She also testified that when she was eight or nine years old, Appellant would make her do the same thing, but would also "put his hands on either side of [her] leg and move [her] back and forth" over his erect penis. Viewing the evidence in the light most favorable to the State, we conclude that the trial judge could have reasonably found that appellant intentionally used his genital area to touch and rub A.'s genitals and that he did so for sexual arousal or gratification, thereby satisfying the elements of "sexual contact."

A.'s testimony provided sufficient evidence for the trial judge to find that "intentional touching" occurred, even though appellant remained clothed during these encounters. *See McKinney v. State*, 82 Md. App. 111, 115 (1990) (upholding a conviction for three counts of third-degree sexual offense when appellant touched the breasts, buttocks, and vaginal area of three girls under 14 "through, not under, the girls' clothing"). The trial judge could have also reasonably determined that appellant's conduct was for sexual arousal based on A.'s testimony that appellant made her strip her clothing in front of him and that his penis became erect.[8]

[8] Although appellant does not specifically challenge the proof underlying his conviction for committing a third-degree sexual offense when A. was approximately 14 years old or older (Count 10), the evidence was unquestionably sufficient to support it. CL § 3-307(a)(4) states that a person commits a sexual offense in the third degree if he or she "engage[s] in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old." CL § 3-307(a)(5) states that a person commits a sexual offense in the third degree if he "engage[s] in vaginal

Finally, we address appellant's challenge to the sufficiency of the evidence on the charges of second-degree rape. For this offense, the required proof varies depending on whether the victim was or was not older than 14. CL § 3-304(a)(3) prohibits a person from engaging "in vaginal intercourse or a sexual act with another . . . if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim." CL § 3-304(a)(1) prohibits a person from engaging "in vaginal intercourse or a sexual act with another . . . by force, or the threat of force, without the consent of the other."

Appellant does not specifically challenge the sufficiency of the evidence to support his conviction for second-degree rape when A. was less than 14 years old (Count 16). He specifically challenges only the conviction for second-degree rape when A. was approximately 14 years old or older (Count 9). In support of that challenge, he argues that the evidence was insufficient to prove that he engaged in vaginal intercourse or a sexual act with A. by force, or the threat of force, and without A.'s consent.

The "issue of whether the intercourse was accomplished by force and against the will and consent of the victim [is] one of credibility, properly to be resolved by the trial court." *Hazel v. State*, 221 Md. 464, 470 (1960); *accord State v. Rusk*, 289 Md. 230, 247

intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old." A. testified that appellant required her to engage in fellatio, a "sexual act" (CL § 3-301(d)(1)(iii)), when she was 14 and 15 years old. A. also testified that appellant required her to engage in vaginal intercourse during that time. The evidence was, therefore, sufficient to support all of the convictions for third-degree sexual offense.

(1981) (stating that "[j]ust where persuasion ends and force begins in cases like the present is essentially a factual issue, to be resolved in light of the controlling legal precepts[]"); *see also State v. Mayers*, 417 Md. 449, 476 (2010) (holding that a rational jury could conclude that the defendant used force or the threat of force to perpetrate a sexual act when the victim verbally resisted his advances and physically resisted by pushing his hands away, and when he took off her clothes and got on top of her). When the alleged perpetrator is an authority figure, such as a police officer, father, or father-figure, the evidence required to demonstrate force is lessened. *See Walter v. State*, 9 Md. App. 385, 392 (1970).

In *Walter v. State*, 9 Md. App. at 387, this Court considered whether there was sufficient evidence to support a police officer's conviction for rape. *Id.* at 387. In evaluating the evidence of force, we noted that in some "exceptional situations" little evidence of force is required, such as "where a father or stepfather rapes his young daughter." *Id.* at 392. We likened the position of the police officer to that of a parent or guardian, explaining that "both . . . are figures of authority; therefore, the force . . . required under these exceptional circumstances is not great." *Id.* We emphasized that the evidence showed that "the victim was in great fear," which made it apparent that the officer "deliberately placed the victim in a situation where she would be afraid." *Id.* at 394.[9]

[9] *Walter* contains some dated language about a rape victim's duty to resist. We do not rely on that language.

The evidence in this case established that appellant was an authority figure. Appellant was A.'s grandfather, he and his wife shared full custody of A. for nearly a decade, and he had functioned as her father since she was seven years old. Accordingly, the trial judge was not required to find a great amount of evidence of force to support appellant's second-degree rape convictions. *Id.* at 392.

In this case, the evidence was sufficient to establish that appellant used force or the threat of force to engage in vaginal intercourse or sexual acts with A. A. testified that, when she attempted to resist his demands, appellant would get mad at her, they would argue, and he would threaten to take away her phone and ground her. She described an incident, after she had initially moved out of appellant's house, in which he became angry because she refused to sit in his lap and kiss him goodbye. Most notably, when A. decided to leave home at the age of seventeen, she left a note stating, "*I cannot* live like this and *be scared all the time*." (Emphasis added). Viewed in the light most favorable to the State, this evidence would permit a rational finder of fact to infer that appellant, a figure of great authority in A.'s young life, coerced her to submit to vaginal intercourse or sexual acts by force or threat of force, in violation of CL § 3-304(a)(1).

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice for this opinion can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2809s18cn.pdf