Circuit Court for Cecil County
Case No. C-07-CR-18-000518

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 061

September Term, 2022

ASHTON S.

v.

STATE

Reed,
Beachley,
Zic,

JJ.

Opinion by Zic, J.

Filed: May 4, 2023

* 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.

** 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.

On September 23, 2019, a jury in the Circuit Court for Cecil County found Ashton S.[1] ("Mr. S."), appellant, guilty of two counts of second-degree attempted rape, sexual abuse of a minor, two counts of third-degree sexual offense, sodomy, two counts of second-degree child abuse, and second-degree assault. Mr. S. was sentenced on February 25, 2022, and he filed this timely appeal.

QUESTIONS PRESENTED

Mr. S. presents two questions on appeal:

1. Whether [Mr. S.]'s right to a fair and impartial jury was violated when the circuit court failed to ensure that no jurors were tainted by other jurors expressing their personal bias[.]

2. Whether the trial court erred when it denied [Mr. S.]'s motion for judgment of acquittal[.]

For the reasons that follow, we decline to exercise plain error review for the first question and answer the second question in the negative. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

In 2016, Monica S. and Ashton S. married. In the same year, following the birth of the couple's son D., Monica[2] and Mr. S. moved in together and with Monica's four

[1] "To protect the victim's identity, we refer to [him] by an initial that has no connection to [his] name. For the same reason, we identify [his] [step]father using only the first initial in his last name." *Juan Pablo B. v. State*, 252 Md. App. 624, 629 n.3 (2021), *rev'd on other grounds*, 480 Md. 650 (2022). For the children involved in this case, we adopt the abbreviations used in the State's appellate papers. For the same reason, we also use abbreviations for other individuals connected to this case and the victim.

[2] We shall refer to Ms. Monica S. by her first name for clarity; in doing so we intend no familiarity or disrespect.

other children, including L. Monica testified that, following a fight between her and Mr. S., Monica moved in with her mother, Linda W., on March 9, 2018, and was granted a protective order against Mr. S. Mr. S. relocated to South Carolina, and the children joined Monica at Ms. W.'s home.

Ms. W. testified that, while Monica and the children were living with her, L. asked to speak with her alone. Ms. W. testified that L. "said that [Mr. S.] was touching him." She clarified, "You mean touching you, hitting you?" L. responded, "Yes, but more than that." Ms. W. testified that, when she prompted him, L. shared additional information about "what [Mr. S.] did to him." Ms. W. testified that she immediately called Monica, and Monica testified that she, in turn, called Child Protective Services ("CPS") and took L. to A.I. Dupont Hospital. The medical examination conducted at the hospital produced a "normal" result, which neither includes nor excludes abuse.

The Department of Social Services ("DSS") assigned Christie Clouser to assess the case. Ms. Clouser was joined by Detective Josh Leffew as part of a joint investigation between DSS and the Elkton Police Department. This investigation commenced on March 16, 2018. On March 19, Detective Leffew interviewed Ms. W., and Ms. Clouser conducted a ChildFirst forensic interview[3] with L. Ms. Clouser also

[3] In her testimony, Ms. Clouser defined a ChildFirst forensic interview as follows:

> A ChildFirst forensic interview is based on the Gundersen Child Protection Training Center protocol, which is called RATAC. It starts with rapport building, getting to know a little bit about the child, explaining the interview process, explain to the child that the room is a safe place. Make the child feel comfortable basically.

spoke to Mr. S. on multiple occasions, and he denied all allegations of abuse of his stepchildren. Ms. Clouser testified that Mr. S. told her he was willing to submit to a polygraph examination and that he "wanted to cooperate to get his family back." On March 20, 2018, Detective Leffew reported to the residence where Monica, Mr. S., and the children had lived together, to further investigate the allegations against Mr. S. On the same day, Detective Leffew interviewed Monica and collected articles of L.'s clothing for DNA testing. This DNA testing did not produce a finding of Mr. S.'s DNA. During the investigation, Detective Leffew contacted the Maryland State Apprehension Team, who located Mr. S. in South Carolina.

On April 25, 2018, the Grand Jury for Cecil County issued a thirty-three-count indictment, nineteen counts of which related to allegations of abuse of L.[4] An arrest warrant was issued on April 26, 2018. Mr. S. was arrested in South Carolina and extradited to Maryland.

> And then at that point we talk about the -- we go into the anatomically correct drawings and try to figure out what words the child uses in regards to body parts. And then we talk about different parts of the body. We go into the allegations. And then we close with trying to make the child comfortable before leaving the interview.

[4] With respect to L., Mr. S. was indicted for three counts of second-degree rape (Counts 1, 2, and 3), three counts of attempted second-degree rape (Counts 4, 5, and 6), sexual abuse of a minor (Count 7), three counts of second-degree sex offense (Counts 8, 9, and 10), three counts of attempted second-degree sex offense (Counts 11, 12, and 13), two counts of third-degree sex offense (Counts 14 and 15), sodomy (Count 16), perverted practice (Count 17), second-degree child abuse (Count 18), and second-degree assault (Count 19).

On June 6, 2018, Mr. S. pled not guilty to all counts. The jury trial commenced on September 18, 2019. When the State rested its case, Mr. S. moved for a judgment of acquittal. The court granted the motion as to Count 17, perverted practice, but denied the motion on all other counts. After the defense rested its case, Mr. S. renewed his motion for judgment of acquittal. Defense counsel incorporated prior arguments and further argued that the twelve rape-related and sex-offense-related counts (Counts 1 through 6, 8 through 13) must be dismissed because the relevant statute was substantively amended on October 1, 2017, and the State presented insufficient evidence to establish the dates of Mr. S.'s alleged conduct.[5] The court granted the motion as to the counts for second-degree sex offense (Counts 8 through 13), reasoning that "there [was] no evidence of anything happening prior to" October 1, 2017. The State also entered nolle prosequi for Counts 3 and 6 because the evidence supported only two possible instances of either second-degree rape or attempted second-degree rape.

The remaining counts that went to the jury, therefore, were as follows: two counts of second-degree rape (Counts 1 and 2), attempted second-degree rape (Counts 4 and 5), sexual abuse of a minor (Count 7), two counts of third-degree sexual offense (Counts 14 and 15), sodomy (Count 16), second-degree child abuse (Count 18), and second-degree assault (Count 19). On September 23, 2019, the jury found Mr. S. guilty of all ten of these counts.

[5] This amendment is discussed in detail below.

After trial, Mr. S. underwent competency evaluations and was found competent, despite defense counsel challenging that finding. Mr. S. also filed various motions, including a Motion for a New Trial. On February 25, 2022, the court heard various arguments, including Mr. S.'s argument on the motion for a new trial. The court denied the motion for a new trial[6] and proceeded to sentencing on the same day.[7] The court imposed the following terms of imprisonment:

- Count 1 (second-degree rape) – 20 years' incarceration with all but 15 years suspended
- Count 2 (second-degree rape) – 20 years' incarceration with all but 15 years suspended; consecutive to Count 1
- Counts 4 and 5 (attempted second-degree rape) – merged into Counts 1 and 2
- Count 7 (sexual abuse of a minor) – 20 years' incarceration with all but 10 years suspended; consecutive to Count 2
- Count 14 (third-degree sexual offense) – 4 years' incarceration with all suspended; consecutive to Count 7
- Count 15 (third-degree sexual offense) – 4 years' incarceration with all suspended; consecutive to Count 14
- Count 16 (sodomy) – merged into Count 1

[6] In this motion, Mr. S. raised two issues: (1) the improper introduction of "bolstering" character evidence with respect to the child witness, and (2) the tainted jury. The trial court determined that the motion for new trial was not the appropriate vehicle or proceeding to address these issues and, thus, denied the motion.

[7] Before the court announced its sentence, Mr. S. reasserted his innocence. The trial judge then explained to Mr. S. that the court's role at sentencing is not to determine "if you're guilty or not guilty" but rather to determine "what to do after twelve people decided that you were guilty."

- Count 18 (second-degree child abuse) – 4 years' incarceration with all suspended; consecutive to Count 15
- County 19 (second-degree assault) – merged into Count 18

Mr. S.'s overall sentence was 40 years of incarceration followed by 5 years of supervised probation. Mr. S. timely noted this appeal.

DISCUSSION

I. THE ISSUE OF JUROR BIAS WAS NOT PRESERVED FOR APPELLATE REVIEW, AND WE DECLINE TO EXERCISE PLAIN ERROR REVIEW.

Throughout jury selection and trial, defense counsel took issue with various instances of alleged juror misconduct. First, during jury selection, Kristen B., Mr. S.'s character witness, was in the hallway with the jury pool and reported that potential jurors were conversing about the case in a way that suggested bias. Specifically, Ms. B. testified under oath that, during jury selection, a potential juror—later identified as Juror 61—stated, "this trial is such like BS, I wish it was like the old days." She testified that another juror responded, "Yeah, eye for an eye." These statements were made in the presence of other potential jurors. Ms. B. further testified that Juror 61 asked for the defendant's name and then "immediately started typing on his phone." Following Ms. B.'s testimony, the judge individually questioned Juror 61. Juror 61 admitted to speaking with two others in the courthouse but denied researching Mr. S. on his phone. After the judge questioned Juror 61 and advised him not to discuss the case or "look anything up" on his phone, defense counsel declined the opportunity to ask follow-up questions or to object to the judge's line of questioning.

Next, on the day after jury selection, defense counsel raised concerns about another instance of potential juror misconduct following Ms. B.'s additional reports. Again, defense counsel called Ms. B. to testify about her observations. Ms. B. testified that, while she was seated in the hallway, she overheard Juror 79 voicing her displeasure and anger about Mr. S.'s courtroom conduct. According to Ms. B., Juror 79 said, while referring to Mr. S. in the presence of approximately 25 other potential jurors, "quit smiling, I'm going to burn your a**, just give me the evidence and I'll burn your a**." Juror 79 then said, "I mean, he's innocent until proven guilty, but just show me the evidence," and Ms. B. testified that "everyone laughed." Ms. B. then testified that Juror 79 later stated, "kids aren't going to lie about who did that to them, especially over a two-year span." The last comments that Ms. B. testified to overhearing related to capital punishment, when Juror 79 said "very loudly" that "they should bring that back."

Following Ms. B.'s testimony, the judge individually questioned Juror 79. She denied making comments about Mr. S.'s courtroom conduct but admitted to stating that children do not "lie about things that happen to them." After determining that Juror 79 was incapable of remaining impartial and upon defense counsel's request, the judge struck her from the jury and replaced her with the first alternate juror; neither party objected. Furthermore, after striking Juror 79, the judge called in each jury member to ensure that prohibited conversations had not taken place at any time. Each juror testified that prohibited conversations had not occurred. For each juror, after the judge asked a few questions, he asked counsel if they were satisfied with the line of questioning or if they had anything to add. In each instance, defense counsel stated she was satisfied,

asked no further questions, and did not object. Upon individually determining that the jurors could remain impartial, the judge allowed them to return to the jury room. Both the State and defense counsel affirmed that they were satisfied.

Additionally, on the last day of trial, prior to deliberations, Juror 51 wrote a note to the court stating that a fellow juror—later identified as Juror 120—"broke down crying" in the jury room during a recess earlier in the trial. Juror 51 wrote that Juror 120 stated that "she was molested as a child and that you don't make those things up," and that "she didn't know if she could be objective." The judge read this note in the presence of counsel, and counsel agreed to the judge's proposal to first individually poll the jurors to determine whether each had heard Juror 120's breakdown and could remain fair and impartial. All the jurors answered that they could remain fair and impartial. The State and defense counsel were present for this polling and were provided the opportunity to ask questions but declined each time, except with Juror 148, who is further discussed below. At the request of defense counsel and over the State's objection, the judge struck Juror 120 in light of the reason for her breakdown and his determination that she could not remain fair and impartial. He replaced her with the second alternate juror.

When the judge called Juror 148 to question her about Juror 120's breakdown, she first testified that she could not recall the event, but she also did not testify that she was outside of the jury room at the time. After Juror 148 exited, defense counsel raised concerns about the truth of Juror 148's testimony, noting that the jury room was small and anyone in the room would have witnessed the breakdown. The judge, therefore, recalled Juror 148, and counsel further questioned her about witnessing the breakdown.

At this time, Juror 148 testified that she witnessed Juror 120 crying and that she knew Juror 120 was crying about her past. After Juror 148 answered counsel's questions, the judge asked if she could "still be fair and impartial," to which Juror 148 replied, "Oh, absolutely." Defense counsel asked no further questions and affirmed that she was satisfied.

Mr. S. contends that the circuit court failed to ensure that no jurors were tainted by the juror misconduct, which violated Mr. S.'s right to a fair and impartial jury. Mr. S. asks this Court to find an abuse of discretion or, alternatively, to consider the issue under plain error review. Mr. S. calls the alleged misconduct by Jurors 61, 79, 120, and 148 "egregious." Mr. S. argues that the court should have conducted a voir dire of all potential jurors in light of Juror 61's and Juror 79's misconduct. Juror 79 remained in the jury room for a full day after her misconduct was discovered, which Mr. S. contends "continued to infect the jury pool." He argues that the court should have, therefore, declared a mistrial on its own initiative, and failure to do so was an abuse of discretion. Mr. S. further argues that "[w]hen the bias of Juror #120 surfaced, the court should have . . . conducted a more thorough examination" of the potential jurors and should not have permitted "them to self-assess." Mr. S. also argues that Juror 148 should have been dismissed after failing to accurately recount what she witnessed during Juror 120's breakdown.

Next, Mr. S. argues that this Court should consider the issue under plain error review. Citing to *Newton v. State*, 455 Md. 341, 364 (2017), he asserts that the court's treatment of concerns about juror bias was a "clear deviation" from legal rules dictating

how to conduct a voir dire of a jury panel in the face of such concerns. Finally, Mr. S. argues that the trial court abused its discretion in refusing to hear Mr. S.'s motion for a new trial on the issue of juror bias. This argument is misplaced, however, because the court heard Mr. S.'s arguments on the motion and determined that a re-litigation of the issue in a motion for a new trial was not the proper proceeding to address this grievance and, therefore, advised Mr. S. to pursue the argument on direct appeal, as he is now doing.

The State, on the other hand, asserts that Mr. S. "did not preserve his claim of error with a timely objection." The State notes that the trial judge "adopted defense counsel's recommended course of action to navigate the [juror-misconduct] issues as they arose," and the "record indicates no timely objections to any action the court took" after adopting defense counsel's recommendations. The State then reviews the transcript passages to which Mr. S. cites in his appellate brief, highlighting that defense counsel did not offer "objections to any of these rulings made during trial." The State asserts that Mr. S. "was required to object in order to preserve this claim of error"; he did not, and, thus, the issue is not properly before this Court. The State also notes that a motion for a new trial "is not a substitute for actual preservation of an issue for appellate review." Finally, the State argues that, even if this Court were to review the issue, the trial court properly regulated the jury selection process and did not abuse its discretion.

"Ordinarily[,] appellate courts will not address claims of error which have not been raised and decided in the trial court." *State v. Hutchinson*, 287 Md. 198, 202 (1980). Failure to contemporaneously object before the trial court results in an

unpreserved issue that is not customarily reviewable by appellate courts. *Id.*; *Savoy v. State*, 420 Md. 232, 243 (2011) (noting the "general rule requiring preservation of claims by contemporaneous objection"). Here, defense counsel did not timely object to the trial judge's regulation of the jury. In fact, as detailed above, the trial judge repeatedly adopted defense counsel's recommended course of action when concerns about juror bias were raised, and defense counsel repeatedly affirmed that she was satisfied with the court's actions. As a result, the issue of juror bias was not properly preserved.

Absent a timely objection, an appellate court may still exercise plain error review under certain, rare circumstances. *Diggs v. State*, 409 Md. 260, 286 (2009). "Plain error is 'error which vitally affects a defendant's right to a fair and impartial trial.'" *Id.* (citations omitted); *State v. Daughton*, 321 Md. 206, 211 (1990). An appellate court may review an issue for plain error when the "unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Hutchinson*, 287 Md. at 203. In determining whether an unpreserved issue meets this threshold, appellate courts shall consider "the materiality of the error in the context in which it arose, giving due regard to whether the error was purely technical, the product of conscious design or trial tactics[,] or the result of bald inattention." *Id.*

The Supreme Court of Maryland[8] has enunciated four conditions for plain error review: (1) a legal "error or defect . . . that has not been intentionally relinquished or

[8] 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. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these

abandoned . . . by the appellant"; (2) that is "clear or obvious"; (3) that "affected the appellant's substantial rights"; and (4) that "must seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *Newton*, 455 Md. at 364 (citations and quotation marks omitted). "It is 'rare' for the Court to find plain error." *Id.* (citation omitted). Here, Mr. S. challenges the trial judge's regulation of the jury in light of expressions of biases by jurors and potential jurors, arguing that Mr. S.'s right to an impartial jury was violated. To be sure, a defendant's right to an impartial jury is fundamental. U.S. Const., amend. VI; Md. Decl. of Rts., art. 21. Errors or defects that infringe upon this right would likely affect a defendant's substantial rights and the integrity of judicial proceedings. *Newton*, 455 Md. at 364.

In this case, however, we do not detect a legal "error or defect" that is "clear or obvious." *Id.* On appeal, Mr. S. argues that the trial court must address juror misconduct on its own initiative. What Maryland law requires, though, the trial judge satisfied in this case: "Once the parties raise the issue of [juror bias] . . . , the trial judge must conduct a meaningful inquiry that will resolve the factual questions raised . . . ." *Dillard v. State*, 415 Md. 445, 459 (2010). Defense counsel raised issues of juror bias with respect to Jurors 61, 79, 120, and 148, and noted that certain issues could have impaired the impartiality of the remaining jurors as well. As detailed above, the trial judge investigated every allegation of or concern regarding juror bias and consulted with

Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

counsel to determine how best to move forward to attain and maintain a fair and impartial jury. Additionally, he struck two jurors and, twice, individually questioned each of the other jurors to address incidents that raised questions of juror bias. These assessments were done in front of counsel, who were granted the opportunity to further question the jurors and object if they saw fit. In light of the trial judge's meaningful inquiry to resolve concerns of juror bias, we cannot conclude that the court erred in a "clear or obvious" manner that would warrant reversal. Accordingly, we hold that the circumstances of this case do not satisfy the conditions for plain error review.

II. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT SUFFICIENT EVIDENCE SUPPORTED THE RAPE-RELATED CONVICTIONS.

When appellate courts are tasked with determining whether there is sufficient evidence in the record to uphold a criminal conviction, the appellate court shall refrain from doing so in a manner that emulates a retrial of the case. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Branch v. State*, 305 Md. 177, 182-83 (1986). Instead, appellate courts review all the evidence in the light most favorable to the State and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319.

Although "the exact date of the offense is not an essential element, and is not constitutionally required to be set forth" in a charging document, the date of the relevant conduct in this case is important because the applicable statute changed on October 1, 2017. *State v. Mulkey*, 316 Md. 475, 482 (1989). The statute defining second-degree rape is found in the Maryland Code at Criminal Law § 3-304. Prior to October 1, 2017,

the statute read, "A person may not engage in vaginal intercourse with another . . ." under various circumstances. Crim. Law § 3-304(a) (2002, 2012 Repl. Vol., Supp. 2016). Now, after October 1, 2017, the statute reads, "A person may not engage in vaginal intercourse *or a sexual act* with another . . ." under various circumstances. Crim. Law § 3-304(a) (emphasis added). A "sexual act" includes "anal intercourse" and "an act . . . in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus." Crim. Law § 3-301(d)(1)(iv), (v).

In the present case, the allegations involve the above-defined sexual-act conduct. If the conduct occurred prior to October 1, 2017, it would not constitute second-degree rape but rather second-degree sexual offense. The second-degree sexual offense statute formerly provided, "A person may not engage in a sexual act with another" under various circumstances. Crim. Law § 3-306 (2002, 2012 Repl. Vol., Supp. 2016). The statute defining second-degree sexual offense was repealed when § 3-304 was amended to include that prohibited conduct (i.e. engaging in a sexual act, for example, by force) in the definition of second-degree rape.

After the close of evidence, the trial judge granted Mr. S.'s motion for judgment of acquittal as to the charges for second-degree sexual offense and attempted second-degree sexual offense, reasoning that the evidence did not support a finding that the alleged conduct occurred prior to October 1, 2017 such that the second-degree sexual offense statute would apply. After the State entered a nolle prosequi as to Counts 3 and 6, the remaining charges included two counts of second-degree rape (Counts 1 and 2) and two counts of attempted second-degree rape (Counts 4 and 5), as defined by the 2017 statute.

During trial, L. testified that Mr. S. "used to try to put his private inside my bottom." L. stated that, "it might have happened twice." In recounting these events, L. testified, "I don't remember the date but I know it was like a long time ago." In the forensic interview with Ms. Clouser, L. also indicated that his youngest brother, D., was able to walk when the alleged assaults occurred. Specifically, L. testified that, while Mr. S. was abusing L., D. "would probably be playing with toys or like going upstairs and stuff. . . . [H]e knows how to get upstairs . . . and like climb and stuff." The jury heard that D. was born on December 5, 2016. The jury also heard that the alleged assaults occurred while the family lived at a particular address, which was between December 9, 2016 and March 12, 2018. On October 1, 2017, D. was nine months and 27 days old.

Mr. S. argues[9] that the evidence is insufficient for a reasonable juror to find that the relevant conduct occurred after October 1, 2017. Mr. S. argues that the evidence did not support the inference that the conduct occurred after October 1, 2017, based only on L.'s statement that D. was walking at the time of the incidents. Mr. S. cites articles that explain that children can begin walking as early as nine months or as late as seventeen to eighteen months. He notes that no other testimony was solicited regarding the age at which D. began to walk—either from Mr. S., Monica, or Ms. W. Mr. S. then argues that

[9] In his appellate brief, Mr. S. briefly asserts, without supporting arguments, that the evidence was insufficient to convict as to all the charges. During oral argument, Mr. S.'s counsel noted that these are not "strong" arguments. We decline to address sufficiency of the evidence as to the non-rape-related convictions because Mr. S. did not articulate any such argument beyond the bare statement that "the State failed to produce sufficient evidence." Md. R. 8-504(a)(6) (stating that a brief shall include "[a]rgument in support of the party's position on each issue").

the age at which children begin to walk is not common knowledge, and, in the absence of evidence introducing such information to the jury, it could not be properly considered by the jury. He further states that the jury was not instructed that, in order to convict for second-degree rape based on conduct other than vaginal intercourse, it must have found that the facts upon which it rested such a conviction must have occurred after October 1, 2017.[10]

The State, on the other hand, argues that L.'s testimony that D., who was born on December 5, 2016, was able to walk up the stairs at the time L. was being abused was sufficient to allow the jury to infer that the relevant conduct occurred after October 1, 2017. The State emphasizes that the standard to which this Court should refer is whether a "rational juror might have inferred" that the conduct occurred after that date. The State further contends that the jury is permitted to consider common knowledge and to draw inferences based on direct or circumstantial evidence when determining whether to find a defendant guilty beyond a reasonable doubt.

Fact finders are tasked with considering and choosing between differing inferences arising out of factual situations. *Burlas v. State*, 185 Md. App. 559, 567 (2009) (citing *State v. Suddith*, 379 Md. 425, 430 (2004)). In reviewing these inferences, an appellate court "must give deference to all reasonable inferences the fact-finder draws,

[10] Mr. S. also cites to *Robinson v. State*, 353 Md. 683 (1999) to emphasize the importance of the dates of the alleged conduct in light of a statutory amendment. In *Robinson*, the statutory amendment altered whether certain conduct was criminal in nature. *Id.* at 686, 695. Here, however, the amendment merely altered where in the code the criminal conduct is found, not whether the conduct is criminal in nature. *Compare* Crim. Law § 3-306 (2002, 2012 Repl. Vol., Supp. 2016), *with* Crim. Law § 3-304.

regardless of whether [the appellate court] would have chosen a different reasonable inference." *Suddith*, 379 Md. at 430 (citation omitted). The use of inferences is not "mysterious" to the judicial process. *Robinson v. State*, 315 Md. 309, 318 (1989). Additionally, the United States Supreme Court has noted that defendants who elect a jury trial elect the "common-sense judgment of a jury" instead of "the more tutored but perhaps less sympathetic reaction of the single judge." *Ring v. Arizona*, 536 U.S. 584, 609 (2002). "Jurors routinely apply their common sense, powers of logic, and accumulated experiences in life to arrive at conclusions from demonstrated sets of facts." *Id*. It is well-settled that jurors "may act upon and take notice of those facts which are of such general notoriety as to be matters of common knowledge." *Wilhelm v. State*, 272 Md. 404, 439 (1974). As jurors employ their common sense, if conflicting inferences arise, "it is for the fact finder to resolve the conflict." *State v. Smith*, 374 Md. 527, 539-40 (2003) (citation omitted).

Here, the jury was permitted to use its "common sense" and "experiences in life" to make reasonable inferences regarding whether the alleged conduct occurred after October 1, 2017. *Robinson*, 315 Md. at 318. *See, e.g.*, *Parker v. Matthews*, 567 U.S. 37, 44 (2012) (permitting jurors to consider "their own common-sense understanding of emotional disturbance" in conjunction with expert testimony about "extreme emotional disturbance"); *Allen v. State*, 402 Md. 59, 78 (2007) (upholding jury's inference, grounded in common sense, that defendant committed unauthorized use of an automobile despite a one-month gap between disappearance of the vehicle and discovery of defendant using the vehicle).

Additionally, "the credibility of witnesses is a matter that falls squarely within the province of the jury." *Reece v. State*, 220 Md. App. 309, 330 (2014). "Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998). During trial, both the State and defense counsel inquired several times into L.'s ability to be truthful through extensive lines of questioning. L. demonstrated that he understood what it meant to lie and that he would "get into trouble" if he lied, and the jury was tasked with weighing L.'s credibility as a witness.

Furthermore, when reviewing the sufficiency of the evidence, appellate courts must look beyond "whether the jury was properly instructed" and "determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. As noted above, the standard under which we review the sufficiency of the evidence is whether "any rationale trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

In the present case, the jury heard testimony that D. was born on December 5, 2016, and that he was walking and "going upstairs" at the time that the alleged conduct occurred. Based on this evidence and in consideration of common sense, a rational juror could have concluded that the alleged conduct occurred after October 1, 2017 because D. was less than ten months old on that date. We hold, therefore, that sufficient evidence supports the convictions for second-degree rape and attempted second-degree rape under the amended version of Criminal Law § 3-304, effective October 1, 2017. Accordingly, we affirm the circuit court's judgment.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

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