

Circuit Court for Montgomery County
Criminal Case No. 131443

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 236

September Term, 2018

JAY ANDRA COLMES

v.

STATE OF MARYLAND

Wright,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 30, 2019

*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.

Jay Andra Colmes, appellant, was convicted by a jury in the Circuit Court for Montgomery County of sexual abuse of a minor and two counts of third degree sexual offense. Mr. Colmes appeals, presenting two questions for our review:

1. Was the trial judge’s failure to either poll the jury or hearken the verdict reversible error?
2. Is the evidence legally insufficient to sustain Appellant’s convictions?

There is no dispute that the record establishes that the jury was not polled, nor was the verdict hearkened. In the absence of a request for the jury to be polled, a failure to hearken the verdict renders the jury’s verdict defective, and a new trial is warranted. *State v. Santiago*, 412 Md. 28, 41-42 (2009). Accordingly, we shall reverse the judgments of the circuit court and remand for a new trial.

“In cases where this Court reverses a conviction, and a criminal defendant raises the sufficiency of the evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place.” *Benton v. State*, 224 Md. App. 612, 629 (2015) (citations omitted). “In reviewing the sufficiency of the evidence, an appellate court determines whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (citation and quotation marks omitted).

“[I]t is the role of the jury to ‘resolve any conflicts in the evidence and assess the credibility of the witnesses.’” *Gupta v. State*, 227 Md. App. 718, 746 (2016) (citations omitted), *aff’d*, 452 Md. 103 (2017), *cert. denied*, ___ U.S. ___, 138 S. Ct. 201 (2017).

Therefore, when we review sufficiency of the evidence, “we defer to the jury’s evaluations of witness credibility, its resolution of evidentiary conflicts, and its discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn.” *Winston v. State*, 235 Md. App. 540, 575, cert. denied *sub nom. Mayhew v. State*, 458 Md. 593 (2018).

Mr. Colmes maintains that the evidence was insufficient for two reasons. First, he claims that the testimony of the victim was “unworthy of belief.” It is not, however, “a proper sufficiency argument to maintain that the jurors should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses.” *Correll v. State*, 215 Md. App. 483, 502 (2013), cert. denied, 437 Md. 638 (2014). See also *Sewell v. State*, ___ Md. App. ___, 2018 WL 6228585, No. 2183, Sept. Term 2016, at 15 (Nov. 29, 2018) (when reviewing sufficiency of the evidence “[w]e do not reweigh the evidence but simply ask whether there was sufficient evidence . . . that could have possibly persuaded a rational jury to conclude that the defendant was guilty of the crime(s) charged.”)

Mr. Colmes next asserts that the State “failed to prove that any acts of sexual abuse took place.” Viewing the evidence “in the light most favorable to the prosecution,” as we are required to do, we conclude that the evidence presented at trial was sufficient to support Mr. Colmes’s convictions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
REVERSED; CASE REMANDED FOR A
NEW TRIAL. COSTS TO BE PAID BY
MONTGOMERY COUNTY.**