

Circuit Court for Baltimore County
Case No.: C-03-CR-25-001017

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 446

September Term, 2025

ALVIN FOSTER

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 23, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

After a bench trial in the Circuit Court for Baltimore County, appellant Alvin Foster was convicted of harassment and electronic harassment. The court later sentenced him to three years’ incarceration, all but ninety days suspended.

On appeal, Foster contends that the evidence was insufficient to support his convictions. In reviewing this issue, we must “determine whether . . . *any* rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt.” *Williams v. State*, 251 Md. App. 523, 569 (2021) (cleaned up). Put differently, “the limited question before us is not whether the evidence should have or probably would have persuaded [most] fact finders but only whether it possibly could have persuaded any rational fact finder.” *Smith v. State*, 232 Md. App. 583, 594 (2017) (cleaned up). We conduct our review keeping in mind our role of reviewing both the evidence and all reasonable inferences that may be drawn from it in a light most favorable to the State. *Smith v. State*, 415 Md. 174, 185–86 (2010); *Williams*, 251 Md. App. at 569.

To convict Foster of the charged crimes, the State had to prove: (1) that he “maliciously engage[d] in a course of conduct, through the use of electronic communication,¹ that alarms or seriously annoys another”; (2) “with the intent to harass, alarm, or annoy the other”; (3) “after receiving a reasonable warning or request to stop by or on behalf of the other”; and (4) “without a legal purpose.” *See* Md. Code Ann., Crim. Law § 3-805(b)(1). Foster does not contend that the State failed to prove each of these

¹ The only relevant distinction between “harassment” and “electronic harassment” is that the latter requires “the use of electronic communication[.]” *Compare* Md. Code Ann., Crim. Law § 3-803(b), *with* § 3-805(b)(1).

elements. He raises only a variance² claim, arguing that the evidence did not show that the harassment occurred on the date alleged in the charging document. We are not persuaded.

Generally, only “matters essential to the charge must be proved as alleged in the [charging document].” *Smith*, 232 Md. App. at 594 (cleaned up). And ordinarily, the exact date of an offense is not an essential element. *Cf. State v. Mulkey*, 316 Md. 475, 482 (1989) (“Here, we conclude the exact date of the offense is not an essential element, and is not constitutionally required to be set forth.”); *Tucker v. State*, 5 Md. App. 32, 35 (1968) (“It is well established that the State is not confined in its proof to the date alleged in the indictment.”). Indeed, “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.” *Crispino v. State*, 417 Md. 31, 51–52 (2010). Foster does not dispute that the evidence here showed that the offenses were committed prior to the charging document and within the period of limitations. This, alone, is sufficient to affirm his convictions.

Yet even if we accept Foster’s distinction that a precise date (or range) is an essential element of harassment—because it “can only be proven if [it] persists after the date that a reasonable request to stop has been made”—the evidence at trial was in sync with the charging document.

² A variance, in this context, is “a difference between the allegations in a charging instrument and the proof actually introduced at trial.” *Variance*, BLACK’S LAW DICTIONARY (12th ed. 2024).

Here, Foster was charged with harassing the victim “on or about October 17, 2024.” He focuses on the fact that the victim did not send a formal cease-and-desist letter until November 30, 2024.³ But the victim also testified that she told Foster in October 2024 that she no longer wanted to give him rides, and he threatened her in response: first for rides, but also for visits, or sex, or to control who the victim was contacting. Moreover, the evidence, in the light most favorable to the State, showed that the victim texted Foster to stop messaging her at least once before sending the cease-and-desist, and he again threatened her in response. From the victim’s testimony surrounding that evidence, a rational trier of fact could have reasonably inferred that her efforts to stop Foster from harassing her began in October 2024 and that he continued despite her reasonable warnings.⁴ *See Pall v. State*, 117 Md. App. 242, 248 (1997) (“A reasonable warning is one in which the defendant knows or has reason to know that his conduct is unwanted and is warned to stop.”).

Thus, even if a precise date (or range) were an essential element of harassment, this evidence, “if believed and if given maximum weight, would have established the necessary elements of the crime.” *McCoy v. State*, 118 Md. App. 535, 538 (1997) (emphasis omitted). *See also Reeves v. State*, 192 Md. App. 277, 306 (2010) (“[T]he testimony of a single

³ We note that the evidence showed that Foster’s conduct continued after this date.

⁴ And in any event, the phrase “on or about” has been interpreted broadly to cover periods near or exceeding the 45-day alleged variance here. *See, e.g., United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987) (no variance where indictment charged “on or about June 1984” but offense was proved in “possibly July or early August”); *Russell v. United States*, 429 F.2d 237, 238 (5th Cir. 1970) (*per curiam*) (affirming conviction with a 12-month variance).

eyewitness, if believed, is sufficient evidence to support a conviction.”). The evidence was, therefore, sufficient to support Foster’s convictions, and we shall affirm the circuit court’s judgment.

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