Circuit Court for Montgomery County
Case No. C-15-CR-21-000142

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 469

September Term, 2024

SANTIAGO ELVIR CALLES

v.

STATE OF MARYLAND

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 19, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal follows appellant Santiago Calles's conviction for sexual abuse of a minor, M.L., between the years of 2006 and 2008. After a four-day trial in June 2023, a Montgomery County jury convicted Calles of sex abuse of a minor and third-degree sex offense. He was acquitted on the charge of fourth-degree sex offense.

Calles timely noted this appeal, and presents two questions for our review, rephrased for clarity as:

1. Was the evidence sufficient to prove that the victim's grandmother's house was a "home" under the meaning of the child sex abuse statute?

2. Did the trial court err when it instructed the jury on modalities of third-degree sex offense not included in the State's response to Calles's bill of particulars?

Perceiving no error or abuse of discretion, we affirm.

FACTS

When M.L., born in 1991, immigrated to the United States from Nicaragua at the age of six, she moved to her grandmother's house in Gaithersburg with her mother, her younger brother, and her maternal aunts.[1] M.L. lived in her grandmother's home for two or three years before she, her brother, and Mother moved into an apartment nearby. Grandmother commonly rented the four bedrooms on the second floor of her home to tenants who were "strangers" to the family. Grandmother lived in the basement of the home, where she had a bedroom, bathroom and small living area. The first floor of the house was comprised of the "common" areas of the home: a kitchen, living room, dining

[1] We shall at times refer to M.L.'s mother and grandmother simply as "Mother" and "Grandmother."

room, and a half bathroom. After M.L. and her family moved out, Mother would drop M.L. and her brother at Grandmother's house every weekday morning before school, where they would catch the bus to school. After school, M.L. would take the bus back to Grandmother's house, where she and her brother would remain until Mother returned to pick them up after work, usually between 6 and 7 p.m.

In 2005, Calles moved into one of the second-floor rooms in Grandmother's house. Within months, Calles began a romantic relationship with Grandmother and moved into the basement with her. Calles had limited interaction with M.L. and her brother, largely confined to greetings in passing. Sometime in 2006, Calles, then in his 50s, was in the common dining room when he overheard M.L. asking her mother to buy her something. The following day, Calles offered M.L. money. M.L. testified that Calles initially offered her $20 and did not ask for anything in return. Over the course of the next month, Calles repeatedly offered M.L. money, in varying amounts between $20 and $100, which she sometimes accepted and other times refused. The interaction between M.L. and Calles escalated one afternoon after school when they were alone in the house together. M.L. recounted that she and Calles were in the communal living room on the first floor when he placed $2,000 on the corner of the TV table, telling her, "there's $2,000 there, but we have to go upstairs, and you have to let me touch you." M.L. and Calles went to a vacant bedroom on the second floor, where he digitally penetrated her. M.L. testified that the arrangement whereby Calles would pay to intimately touch her went on for "a couple of months."

After a couple of months, Calles asked M.L. to go to the basement where he lived with Grandmother. M.L. succinctly described the encounter: "We went downstairs, and he started to touch me under my clothes, and then proceeding to me taking off my clothes. And then he put on a condom and penetrated me." M.L. related that she had sex with Calles in exchange for money "a couple of times" before finally telling him she did not want to continue the arrangement. M.L. began avoiding her grandmother's house as much as possible, picking her younger brother up at the bus stop and taking him to a friend's house instead.

In December 2021, Calles was indicted on four counts of sex abuse of a minor and six counts of third-degree sex offense, involving M.L. and three other victims between the ages of five and fifteen. The victims were all related to one another, and the incidents all took place in Grandmother's home between 2006 and 2018. The counts involving M.L. were severed for trial. In response to the indictment, Calles filed a bill of particulars requesting the State to specify "the precise nature of any sexual act or sexual contact" relating to the alleged third-degree sex offense. The State responded: "As to [the third-degree sex offense charge] of the indictment the State alleges that all and some and one of the following acts form the basis of the third degree sexual offense[:] [Calles] engaged in vaginal intercourse with M.L."

At trial, Calles testified in his own defense, denying any sexual activity with M.L. "because she was a little girl, basically." He suggested that the family concocted the

allegations against him to avoid repaying loans he had made to Mother and her ex-boyfriend.

As part of its jury instructions, the court instructed jurors that for third-degree sex offense the State had to prove "unlawful penetration," defined in relevant part as "penetration . . . of another's genital opening or anus with . . . part of the person's body." Defense counsel argued that the court's instruction for this offense must be limited to vaginal penetration because the State's response to the bill of particulars specified vaginal intercourse as the charged modality of third-degree sex offense. The court disagreed, ruling that under *Dzikowski v. State*, 436 Md. 430 (2013), a bill of particulars is

> . . . designed to provide the defendant with information with which he would have been supplied had he been indicted using the standard indictment, which constitutes notice that is constitutionally required to be given in order to apprise the defendant of the crime with which he is accused, as well as of the particular conduct to which that accusation relates and refers.
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> It's a notice provision or a notice requirement. So the statute does not define bill [of] particulars or express the State's purpose according to the *Dzikowski* case. . . . So [the Supreme Court of Maryland says] we have recognized that the purpose of a bill of particulars is to guard against the taking of an accused by surprise by limiting the scope of the proof. This allows the defendant to prepare a defense properly, including the process of securing witnesses.
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> A bill of particulars provides a means of ascertaining the exact factual situation upon which the defendant was charged. A bill specifies particulars as to the offense charged and not as to all evidence that the State may adduce to prove it.
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> First of all, that last sentence, I think, is very important because, in the bill of particulars, there is this sort of additional language, "some" and "all" and "one", which would suggest that there are other things. And then in addition to the bill of particulars, we have the complaining witness' sworn testimony that there was the additional act of digital penetration.

> The bill of particulars functions as a limit on the factual scope of the charge, rather than its legal scope. It's not to be used as an instrument to require the state to elect a theory on which it intends to proceed. Instead, it is a privilege allowed to the accused where the indictment is so general that it fails to disclose the information sufficient to afford him a fair and reasonable opportunity to meet it and defend himself.
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> He's known for five months that this was an allegation that would constitute a third-degree sex offense. Because the words "digital penetration" were not included in the bill of particulars, I am not going to -- that's not a reason for me to not allow the State to argue that or to attempt to prove the third-degree sex offense through that conduct.
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> * * *
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> . . . The *Dzikowski* case seems to suggest that what we're talking about here is notice, and I think there was plenty of notice that that was an allegation that the State would proceed on.

The jury convicted Calles of sex abuse of a minor and third-degree sex offense. He was acquitted of fourth-degree sex offense.[2] The court sentenced Calles to twelve years' imprisonment for sex abuse of a minor, suspending all but eight years. For the third-degree sex offense, the court imposed a concurrent sentence of ten years, suspending all but eight years. The court further imposed five years of supervised probation and ordered that Calles register as a tier three sex offender for the remainder of his life.

DISCUSSION

I.

Under Section 3-602(b)(2) of the Maryland Criminal Law Article, a "household

[2] Between the end of the trial and his April 30, 2024 sentencing hearing, Calles entered *Alford* pleas for two additional counts of the original ten-count indictment. The State entered nolle prosequi for the remaining six counts of the indictment. Consistent with the plea agreement, the court imposed 18-month concurrent sentences for the two counts, but which were made consecutive to the sentences in this case.

member or family member may not cause sexual abuse of a minor." Md. Code Ann. (2002, 2021 Repl. Vol.), § 3-602(b)(2) of the Criminal Law Article ("CR"). A "household member" is defined as a person "who lives with or is a regular presence in a home of a minor at the time of the alleged abuse." CR § 3-607(a)(4).[3] Calles contends that he and M.L. were not household members "because they never shared a home." He further argues that because M.L. did not live, sleep, or eat at her grandmother's house, that residence could not be considered a "home" as contemplated by the statute, and therefore the circuit court erred in denying Calles's motion for judgment of acquittal. The State maintains that Calles's "narrow construction of the term 'home' is inconsistent with both the law and the evidence adduced at trial." We agree with the State.

A. Standard of Review

Appellate courts generally review sufficiency of evidence claims by determining "whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Howling v. State*, 478 Md. 472, 493 (2022) (quoting *State v. McGagh*, 472 Md. 168, 194 (2021)). Thus, we view the evidence "in a light most favorable to the State," and "give due deference to the jury's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Vanderpool v. State*, 261 Md. App. 163, 180 (2024) (internal quotations omitted) (quoting *White v. State*, 363 Md. 150, 162 (2001)). However, Calles's appellate

[3] These sections of the Criminal Law Article have not changed since the dates of the alleged offenses in this case.

challenge involves statutory interpretation of the word "home." "When an evaluation of the 'sufficiency of the evidence involves an interpretation and application of Maryland statutory and case law' we must preliminarily 'determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Id.* (quoting *Rodriguez v. State*, 221 Md. App. 26, 35 (2015)).

B. Statutory Interpretation

"The cardinal rule of statutory construction is to ascertain and effectuate the General Assembly's intent." *Kranz v. State*, 459 Md. 456, 474 (2018). The primary goal is "to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision." *Noble v. State*, 238 Md. App. 153, 161 (2018) (internal quotations omitted) (quoting *Bd. of Cnty. Comm'rs v. Marcas, L.L.C.,* 415 Md. 676, 685 (2010)). Any statutory analysis must begin by assessing "the normal, plain meaning of the language of the statute." *Id.* (quoting *Espina v. Jackson*, 442 Md. 311, 321 (2015)). "When the statutory language is clear, we need not look beyond [it] to determine the General Assembly's intent" and we "will give effect to the statute as written." *Rogers v. State*, 468 Md. 1, 14 (2020).

C. Analysis

We begin our analysis with the plain language of CR § 3-601(a)(4). "Household member" is defined as a person who either (1) lives with a minor, or (2) is a regular presence in a home of a minor. The phrase "a regular presence in a home" is not defined in the statute. Calles asserts that M.L. lived with her mother, not her grandmother. Because

M.L. never slept or ate at Grandmother's, Calles contends that Grandmother's house does not qualify as "a home" of the victim.

We find *Wright v. State*, 349 Md. 334 (1998), instructive. There, the Supreme Court of Maryland was tasked with construing the terms "household member" and "home" as used in this statute. The Court observed:

> The issue is one of statutory construction, and we are thus required to ascertain and effectuate the legislative intent. As noted, the relevant statutory provision—§ 35C(a)(5)—defines "household member" as a person who lives with or is a regular presence in "a home of a child at the time of the alleged abuse." (Emphasis added.) Use of the indefinite article "a," as opposed to the definite article "the," itself indicates a legislative recognition that, for purposes of the child abuse statute, a child may have more than one home. Given the context, that is not an unreasonable recognition.
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> Words like "home," "resident," and "household" are not capable of singular, absolute, generic definition in the law, because they are used in so many different ways and for so many different purposes. They may mean one thing to the census taker, another to an automobile insurer, one thing for voting purposes or for establishing venue in litigation, another for determining where to mail a letter. When the law uses such a word as a substitute for domicile, it may encompass only one, permanent, fixed abode, without regard to where the individual may be actually residing at a given moment. In other contexts, it may instead mean where the person is staying at the moment. The flexibility in these terms is especially important with respect to children, who are more frequently part of several homes and households. If their parents are separated or divorced, they likely will spend time and have clothes and belongings in the homes of both parents; they may visit grandparents or other relatives for varying periods of time; they may be off to camp during the summer. Where their "home" is at any given time may well depend on what is at stake in ascertaining where their home is.
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> The term "household member," and with it the term "home," was added to § 35C in 1991. The clear purpose of the addition was to extend the reach of the statute for the greater protection of children, to declare as criminal violations acts of abuse committed against children by a class of persons not then subject to the law. The Legislature obviously recognized that there were people other than parents, custodians, and persons directly

> charged with the care and supervision of a child who were in a position to commit abuse within the child's home setting, where, because of the status of both the abuser and the child in that setting, the child might be helpless against the predation. We cannot subscribe to Wright's view that the Legislature intended to restrict that protection to only one residential setting, and thus to ignore the reality actually faced by children.

Id. at 355-56. We note that the Supreme Court expressly held that the term "home" in the statute requires "flexibility" in its construction because children are "more frequently part of several homes and households." *Id.* at 356. Thus, the *Wright* Court recognized the legislative intent to construe the statute in a manner to promote the declared policy of protecting the safety and security of children.

Turning to the case at bar, Calles maintains "[a] house where a teenager neither lives, sleeps, nor eats is not their 'home.'" In his view, "M.L. lived at her mother's house." We reject Calles's narrow construction of the term "home."

Although M.L.'s primary residence at the time of the abuse was clearly Mother's nearby apartment, *Wright* informs that a child may have more than one "home" for purposes of this statute. Here, the evidence adduced at trial showed that M.L. and her younger brother had, prior to moving to the apartment, lived with their mother, aunts and grandmother at Grandmother's Gaithersburg home. At the time of the abuse, M.L and her brother spent at least four hours a day at Grandmother's house during the week, before and after school. The evidence showed that M.L. had unfettered access to all three floors of the house. She testified that after school she watched television in the common area on the first floor. Mother stated that M.L. did her homework at Grandmother's house. Although Mother believed her children were in the care of an aunt when she dropped them at the

house, M.L. indicated that there were times when Calles was the only adult in the house. Because Calles lived in Grandmother's home and the communal area was on the first floor, M.L. was in a position where encountering Calles would have been unavoidable while both were in the home.

The circuit court found that Grandmother's house satisfied the meaning of a home under the statute, stating that

> It's likely that [M.L.] spent more of her waking hours at her grandmother's home with family members than she did in the home where she actually later had to sleep at night. . . . I think a reasonable jury could conclude from the evidence that this was a home of [M.L.] at the time in question. If the legislature had intended to limit this to the place where the child ordinarily laid her head to sleep at night, they had the ability to say that, and presumably would have said that. . . . So on the facts of this case, I do think there's sufficient evidence from which a reasonable jury could conclude that the defendant was a household member and that this was a home of [M.L.] at the time that these offenses are alleged to have occurred.

We agree, and therefore hold that the evidence was legally sufficient for the jury to conclude that Grandmother's house was a "home" of M.L., as contemplated by the statutes in effect at the time of the sexual abuse.

II

Calles next argues that the court erred by not limiting the State's theory of third-degree sex offense to its response to Calles's bill of particulars. Specifically, because the State's response to his bill of particulars expressly referred to vaginal intercourse as the basis for the third-degree sex offense charge, Calles asserts that the court erred by allowing the State to expand its theory of the case to include "vaginal or digital penetration."

A. Standard of Review

Interpretation of the sufficiency of the State's response to a bill of particulars is reviewed for abuse of discretion. *Dzikowski*, 436 Md. at 446-47.

B. Analysis

In response to the indictment, Calles demanded a bill of particulars. Under Maryland Rule 4-241, a defendant "may file a demand in circuit court for a bill of particulars" and the State shall file a bill in response or "state the reason for its refusal to comply with the demand." Md. Rule 4-241(a), (b). The Rule further states that "[o]n motion of the State, the court may permit a bill of particulars to be amended at any time subject to such conditions as justice requires." Md. Rule 4-241(d).

Here, during the court's conference with counsel concerning proposed jury instructions, defense counsel objected to the court's third-degree sex offense jury instruction because its reference to "unlawful penetration" was inconsistent with the State's response to the bill of particulars, which defense counsel claimed limited the offense to "vaginal intercourse only." The court instructed the jury as follows:

> So Mr. Calles is charged with the crime of third-degree sexual offense. In order to convict Mr. Calles of third-degree sexual offense, the State must prove:
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> One, that Mr. Calles engaged in a sexual act with [M.L.].
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> Two, that [M.L.] was 14 or 15 years of age at the time of the act.
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> And three, that Mr. Calles was at least 21 years old at the time of the act.
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> A "sexual act" means unlawful penetration.

> "Unlawful penetration" means the penetration, however slight, of another's genital opening or anus with an object or part of the person's body if it can be reasonably construed that the act is intended for sexual arousal or gratification or for the abuse of either person.

In support of his argument that the State should be limited to what it specified in its bill of particulars, *i.e.*, vaginal penetration only, defense counsel stated,

> one of the roles of an indictment and a bill of particulars is to limit and define the facts that a State is proceeding on against the defendant. Mr. Calles was entitled to a bill of particulars. He received a response to the bill of particulars. And if the State wanted to deviate from that response, it could have filed a motion to amend from that response, or it could have filed another superseding indictment to add further allegations. . . . [T]he whole point of a bill of particulars in a case is there are oftentimes where there are allegations that a defendant may have committed multiple offenses. And the point of a bill of particulars is to define and tell a defendant of all the bad things that you've done; these are the bad things that we are charging you with doing. And that is what the State did. That is how I prepared for trial, and that is what the jury should be instructed on.

Significantly, Calles did not object to the jury instruction on any other grounds.

The court ruled that a bill of particulars "is designed to provide the defendant with information with which he would have been supplied had he been indicted using the standard indictment . . . It's a notice provision or notice requirement." The court first noted that the language in the State's response that "all and some and one of the following acts form the basis of the third-degree sexual offense" was broad enough to include acts other than vaginal intercourse. The court further found that Calles had "known for five months that this was an allegation that would constitute a third-degree sex offense. . . . The *Dzikowski* case seems to suggest that what we're talking about here is notice, and I think

there was plenty of notice that that was an allegation that the State would proceed on."[4] On this issue, we discern no abuse of discretion.

The above colloquy, however, suggests that the court as well as the prosecution and the defense were unaware that the statute for third-degree sex offense during the relevant time period between 2006 and 2008 did not include digital penetration in the definition of "sexual act." At the time of the abuse, the statute prohibiting third-degree sex offense provided in relevant part: "(a) a person may not . . .(4) engage 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; or (5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old." CR § 3-307 (2002, 2008 Supp.). The Criminal Law Article defined "sexual act" as including "an act: (1) in which an *object* penetrates, however slightly, into another individual's genital opening or anus; and (2) that can be reasonably construed to be for sexual arousal or gratification, or for the abuse of either party." CR § 3-301(f)(2) (2002, 2008 Supp.) (emphasis added). The definition of "sexual act" was amended in 2011—after the occurrence of these offenses—to include penetration by *either an object or an individual's body part*. CR § 3-301(e)(1)(v) (2002, 2011 Supp.) (as amended by 2011 Md. Laws chs. 195 and 196) (emphasis added).

Because the statutory definition of "sexual act" between 2006 and 2008 did not include digital penetration, the State's identification of "vaginal intercourse" in its response

[4] Appellant does not take issue with the court's finding that he had five months' notice of the allegations.

to the bill of particulars was legally correct. Although the statute applicable in 2006-2008 provided for other modalities of third-degree sex offense based on "sexual contact" that included digital penetration, Calles was not charged with those modalities of the offense. *See* CR § 3-307(a)(1)-(3) (2002, 2008 Supp.). Both appellant and the State agree that the court's instruction that "unlawful penetration" includes penetration of "another's genital opening or anus" with a "part of another person's body" was an incorrect statement of law at the time of the offense. However, defense counsel objected to the jury instruction on the sole basis that the State should not have been permitted "to deviate from [its] response" to the bill of particulars. In short, appellant did not object to the jury instruction on the basis that it was an incorrect statement of the law at the time of the offense. Ordinarily we will not consider an issue on appeal unless it "plainly appears by the record to have been raised in or decided by the trial court . . ." Md. Rule. 8-131(a). When the defendant asserts one ground for an objection at trial, he or she normally is limited to those grounds on appeal. *Klauenberg v. State*, 355 Md. 528, 541 (1999).

In conclusion, we discern no abuse of discretion in the court's determination that the State's response to the bill of particulars sufficiently placed Calles on notice of the offense. Any relief that Calles may be entitled to as a result of the incorrect jury instruction is left to appropriate post conviction proceedings.

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