Circuit Court for Prince George's County
Case Nos: C-16-CR-23-001318,
C-16-CR-24-000144, and CT200873X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1197

September Term, 2024

NELSON AMILCAR JAIME

v.

STATE OF MARYLAND

Tang,
Albright,
Hotten, Michele D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: March 25, 2026

*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).

Appellant Nelson Amilcar Jaime was charged in three separate cases with numerous sexual offenses against three minor victims: X.,[1] born on March 27, 2006, Y., born on October 9, 2011, and Z., born on March 26, 2002. The three cases were joined for trial. After a jury trial, Mr. Jaime was convicted of 28 counts of sexual offenses. He was sentenced to incarceration for 295 years with all but 100 years suspended. This timely appeal followed.

Mr. Jaime presents five questions for our consideration, which we have restated slightly as follows:

> I. Did the circuit court err in granting the State's motion to admit statements of the children, and other crimes evidence in the case, under Maryland Rule 5-404(b)?
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> II. Did the circuit court err in joining the cases of multiple alleged victims for trial?
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> III. Did the circuit court err in failing to dismiss unreasonably multiplicitous charges in the case, despite defense counsel's failure to seek a bill of particulars?
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> IV. Did the circuit court err in failing to conduct a hearing on Ms. Kasambe Nawembe's[2] expert testimony despite defense counsel's failure to request the same?
>
> V. Was the evidence legally sufficient to convict appellant of the crimes charged despite counsel's failure to specifically preserve the insufficiency claim?

[1] Pursuant to Maryland Rule 8-125, to protect the anonymity of the victims, we shall refer to each of them by a letter selected at random. To preserve anonymity, we also represent certain individuals throughout with a randomly assigned initial. *See* Md. Rule 8-125. We mean no disrespect in doing so.

[2] The record does not indicate that any person by this name testified at trial. We shall treat this question as pertaining to Ms. Sanyambe Kassembe, a social worker and forensic interviewer, who testified at trial.

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

This case has its origins in complaints by two young women, X. and Z., and a minor, Y. All claimed that Mr. Jaime sexually abused them as minors.

X.: Case No. CT200873X[3]

X. testified that on June 9, 2020, she reported a sexual assault by Mr. Jaime. The sexual assault occurred at the home of X.'s grandmother, Q., and Mr. Jaime, who was Q.'s husband. Their home was located at 8 Dell Place in Laurel, Prince George's County, Maryland. X. lived with Q. from the time she was "months old" until she was eleven years old. Thereafter, X. stayed with Q. and Mr. Jaime on weekends and school breaks.

[3] The indictment in X.'s case, number CT200873X, set forth seventeen counts as follows: **count one**, sexual abuse of a minor by a household member on June 9, 2020, in violation of § 3-602(b)(2) of the Criminal Law ("CR") Article of the Maryland Cade; **count two**, second-degree rape in violation of CR § 3-310 on June 9, 2020; **count three**, attempted second-degree rape in violation of CR 3-310 on June 9, 2020; **count four**, attempted third-degree sexual offense on June 9, 2020; **count five**, attempted vaginal intercourse with a person fourteen years old, being at least four years older than the victim, on June 9, 2020; **count six**, sexual contact in violation of CR § 3-308(b)(1) on June 9, 2020; **count seven**, sexual contact in violation of CR § 3-308(b)(1) on June 9, 2020; **count eight**, second-degree assault in violation of CR § 3-203, on June 9, 2020; **count nine**, second-degree assault in violation of CR § 3-203 on June 9, 2020; **count ten**, sexual abuse by a household member in violation of CR § 3-602(b)(2) on June 8, 2020; **count eleven**, sexual contact in violation of CR § 3-308(b)(1) on June 8, 2020; **count twelve**, sexual contact in violation of CR § 3-308(b)(1) on June 8, 2020**; count thirteen**, second-degree assault in violation of CR § 3-203 on June 8, 2020; **count fourteen**, second-degree assault in violation of CR § 3-203, on June 8, 2020; **count fifteen**, sexual abuse by a household member in violation of CR § 3-602(b)(2), from May 31, 2020 through June 7, 2020; **count sixteen**, sexual contact in violation of CR § 3-308(b)(1) from May 31, 2020 through June 7, 2020; and, **count seventeen**; second-degree assault in violation of CR § 3-203, from May 31, 2020 through June 7, 2020.

When the Covid pandemic began in March 2020, X. again lived regularly with Q. and Mr. Jaime. X. testified that she had grown up with Q. and Mr. Jaime and had a stronger relationship with them than with her mother.

The house on Dell Place had two stories and a basement. There were two bedrooms on the second floor and there was a bathroom between them. Q. and Mr. Jaime slept in one bedroom and X. slept in the other. There were other rooms in the house, including in the basement, that were rented out to other people. In June 2020, other people living in the house included a man named Santos, a woman and her seventeen-year-old "kid[,]" and two other people in the basement.

X. testified that in the weeks prior to June 8, 2020, Mr. Jaime "started getting really touchy" and was "hugging [her] a lot more than usual." Mr. Jaime "got up behind [her] a lot." This behavior occurred two to three times per week. X. said Q. noticed the behavior and talked to her about it. X. did not tell her mother about it.

Q. typically left for work at about seven in the morning and worked until four or five in the evening. According to X., it was common for Mr. Jaime to enter her room and provide her with coffee on weekdays. On June 8, 2020, X. was awakened by Mr. Jaime who told her to wake up and that he had coffee for her. X. said no because she wanted to sleep in. X.'s three chihuahuas entered her room and she thought that Mr. Jaime had failed to close the bedroom door when he left. X. was sleeping on her side, facing the wall, and she had covers on her. Mr. Jaime laid down behind her and hugged her. He told X. that he loved her and said that her mother and grandmother would never "love you like this." Mr. Jaime got under X.'s covers and used his hand to touch her thigh and

chest. At some point, he "started trying to touch, . . . my breast area or my vagina." He "was grinding himself against" her. Mr. Jaime hugged X. with his arms and she testified that she felt "very restrained because I couldn't move much." X. was wearing a t-shirt and pants and Mr. Jaime touched her over her clothing. She described his hand moving over her t-shirt "in a circular motion." X. did not say anything to Mr. Jaime because she "really just didn't know what to say." At some point, he stopped, got up, said, "[d]on't tell anybody," and walked out of the room. He returned to the room a couple of times again telling her not to tell anyone. He came back one last time to say that he was going to work. X. did not tell anyone what happened.

On the following day, at about nine in the morning, Mr. Jaime again walked into X.'s room and told her to "[g]o get your cup of coffee." X. said no, that she wanted to sleep in. X. was in her bed with a pillow partially covering her face and her dogs were above her head. Mr. Jaime got on top of her and said, "I love you." He told her, "I'm going to buy this, I'm going to buy that for you." Mr. Jaime tried to touch X.'s breasts. He lifted up her shirt and bra, kissed her, and pulled down her underwear and pants. Mr. Jaime kissed her cheek, tried to kiss her mouth, and put his mouth on her breasts and "either kissed or tried to suck" them. X. heard Mr. Jaime unzip his pants. She testified that Mr. Jaime was between her legs and "completely on top" of her. He "started trying to insert" his penis into her "and he also like was using his hands too." His hands touched her breast and vagina. According to X., "whenever [Mr. Jaime] was touching my vagina, he was trying to put his fingers in the entrance." She never saw Mr. Jaime's penis, but she

felt it on her vagina, "close to the entrance." X. pushed up her body "so he wouldn't like go inside of [her]."

"At some point," Mr. Jaime got off X., told her to sit up, and then left the room. He returned to the room with a towel and told X. "to clean [herself] up[,]" which she did. X. handed the towel to Mr. Jaime and he said, "[d]on't tell anybody. I'm going to get you all these things. If you tell anybody, they're going to turn me into the police and I'm sure you don't want that." Mr. Jaime returned to the room a couple of times. He said, "[d]on't tell anybody" and then said he was going outside to do something with a car. At that point, X. "took the chance to call [her] mom" and asked her to come pick her up. X.'s aunt, B., who was using her mother's car that day, picked up X. As X. was leaving the house, Mr. Jaime met her by the staircase and said, "[d]on't tell anybody." When X. got into the backseat of the car, she was "very quiet," which was unusual for her. B. asked if she was okay and X. "nodded." X. did not tell her aunt what happened, but when she got home she told her mother "the general idea."

According to X., her mother was "pretty mad." Later that day, after 5 p.m. when Q. got home from work, X. and her mother went to the house on Dell Place and told Q. what happened. Mr. Jaime was not at the house at the time they were there. X. and her mother then went to the police station and X. told a police officer and a social worker what happened. Laurel Police Detective Adam Cheek scheduled an interview with X. at the Child Advocacy Center.

Y.: Case No. C-16-CR-23-001318[4]

X.'s cousin, Y., who was another granddaughter of Q., also claimed that Mr. Jaime sexually abused her. Y. testified that from the time she was five years old until she was eight or nine years old, when she visited Q. and Mr. Jaime at their home on the weekends, Mr. Jaime touched her chest and vaginal areas with his hands. This happened more than once each year that she visited. Y. had her own bed at the home of Q. and Mr. Jaime, but sometimes she slept on the floor and sometimes she slept in a bed with Q. and Mr. Jaime. Sometimes Mr. Jaime touched Y. when Q. was at work and sometimes when Q. was in bed with Y. and Mr. Jaime. On the occasions when Q. was in the bed, she

[4] The indictment in Y.'s case, number C-16-CR-23-001318, set forth eight counts as follows: **count one**, a continuing course of conduct over a period of 90 days or more with a victim under the age of 14 years, which includes three or more acts in violation of CR §§ 3-303, 3-304, 3-307, or violations of CR § 3-305 or § 3-306 as it existed before October 1, 2017, in violation of CR § 3-315, from October 8, 2016 through October 7, 2017; **count two**, sexual abuse of a minor by a household member in violation of CR § 3-602(b)(2), from October 8, 2016 through October 7, 2017; **count three**, a continuing course of conduct over a period of 90 days or more with a victim under the age of 14 years, which includes three or more acts in violation of CR §§ 3-303, 3-304, 3-307, or violations of CR § 3-305 or § 3-306 as it existed before October 1, 2017 in violation of CR § 3-315 from October 8, 2017 through October 7, 2018; **count four**, sexual abuse of a minor by a household member in violation of CR § 3-602(b)(2) on October 8, 2017 through October 7, 2018; **count five,** a continuing course of conduct over a period of 90 days or more with a victim under the age of 14 years, which includes three or more acts in violation of CR §§ 3-303, 3-304, 3-307, or violations of CR § 3-305 or § 3-306 as it existed before October 1, 2017, in violation of CR § 3-315, from October 8, 2018 through October 7, 2019; **count six,** sexual abuse of a minor by a household member in violation of CR § 3-602(b)(2) on October 8, 2018 through October 7, 2019; **count seven,** a continuing course of conduct over a period of 90 days or more with a victim under the age of 14 years, which includes three or more acts in violation of CR §§ 3-303, 3-304, 3-307, or violations of CR § 3-305 or § 3-306 as it existed before October 1, 2017, in violation of CR § 3-315, from October 8, 2019 through October 7, 2020; and, **count eight**, sexual abuse of a minor by a household member in violation of CR § 3-602(b)(2), from October 8, 2019 through October 7, 2020.

would be on one side of the bed, Mr. Jaime would be in the middle of the bed on Y.'s left side, and Y. would be on the other side of the bed. Y. stated that she could not see what Q. was doing when the touching occurred. Y. identified a photograph of the home and said that Mr. Jaime touched her when she was in the room shared by him and Q. Y. told the police, her mother, and a social worker about what happened. At the time the touching occurred, X. was also living in the house.

Y.'s mother, B., testified that Y. would stay at the home of Mr. Jaime and Q., located at 8 Dell Place in Laurel, on weekends, holidays, and "whenever [her] mother felt like it." On February 3, 2023, B. received a call from the Howard County Police Department and was advised that her son had called the suicide hotline in regard to her daughter, Y. When she got home, a police officer and social workers were there with Y. Y. told B. that she was "scared" and "sad" about "[t]hings that happened" with Mr. Jaime at Q.'s house. Y. used her hands to show B. where Mr. Jaime touched her. "She rubbed her hands from the neck down to her private parts[,]" meaning her vagina. Thereafter, Y. was hospitalized.

On March 23, 2023, Y. was interviewed by Sanyambe Kassembe, a social worker and forensic interviewer employed by the Prince George's County Department of Social Services at the Child Advocacy Center. Clips from a video recording of that interview were played for the jury at trial. Among other things, Y. said in the interview that between the ages of five and eight, Mr. Jaime grabbed and touched her vagina and butt under her underwear with his hands and that he tickled her. This occurred when she was under the covers when she was in bed with Mr. Jaime and Q.

Z.: Case No. C-16-CR-24-000144[5]

Z. came to the United States from El Salvador with her father in 2016. She and her father stayed in the home of Mr. Jaime and Q., at 8 Dell Place in Prince George's County, beginning on December 27, 2016. They stayed in a room that was located to the right of the front door. Z. knew Mr. Jaime before she came to live in the house on Dell Place because he had been a friend of her parents "[f]or a long time" and sometimes visited them in El Salvador. After arriving at the house on Dell Place, Z. would sometimes go upstairs and Q. would make her pupusas. There were mornings when Mr. Jaime "came from behind and touched [Z.'s] shoulder." This "felt uncomfortable" and "was not normal," so Z. told her father she would not go upstairs anymore and would stay downstairs.

According to Z., "everything was fine until the following month" when Mr. Jaime entered her room at eight or nine in the morning while she was sleeping and her father and Q. were at work. Z. was lying on her stomach in her bed and Mr. Jaime sat in a chair holding a cup of coffee. "At first [Z.] was frightened and [she] pretend[ed] to be asleep,"

[5] The indictment in Z.'s case, number C-16-CR-24-000144, set forth five counts as follows: **count one**, sexual abuse of a minor by a household member, to wit, touching her on her hips, in violation of CR § 3-602(b)(2), from December 27, 2016 through October 31, 2017; **count two**, sexual abuse of a minor by a household member, to wit, kissing, in violation of CR § 3-602(b)(2), from December 27, 2016 through October 31, 2017; **count three**, sexual abuse of a minor by a household member, to wit, engaging in cunnilingus, in violation of CR § 3-602(b)(2), on December 27, 2016 through October 31, 2017; **count four,** sexual abuse of a minor by a household member, to wit, offering money and goods in exchange for vaginal intercourse, in violation of CR § 3-602(b)(2), on December 27, 2016 through October 31, 2017; and, **count five**, knowingly soliciting a minor to engage in activities that would be unlawful under CR § 3-324, from December 27, 2016 through October 31, 2017.

but then she decided she should wake up. She got up and asked Mr. Jaime what he was doing there, and he said he was bringing her coffee and wanted to talk to her. At that time, Z. was wearing "a small pair of shorts and a big shirt" and she was under the bed covers. She asked Mr. Jaime to leave but he did not. He said that he wanted to talk to her because he felt lonely. She replied that she had nothing to talk to him about. Mr. Jaime sat on her bed and "at that moment, [Z.] was frightened." She asked Mr. Jaime to leave. She said that he was a friend of her father and asked why he was doing that. Mr. Jaime responded that "he only wanted to talk, that he wanted to feel good, that he thought that [she] was pretty."

Mr. Jaime did not leave the room. He stood up, told Z. that she was pretty, and asked if she had a boyfriend. Mr. Jaime told Z. they could get along very well, but she said no. He kept saying the same thing, and eventually he left and went upstairs. Later, at about noon or 12:30 p.m., Mr. Jaime returned to Z.'s room as he was leaving for work and left "some money under the door."

At the time this occurred, Z. was not attending school because, among other things, she had not received certain vaccines. On three occasions, Mr. Jaime drove Z. to appointments to be vaccinated. The first time Mr. Jaime gave her a ride, he put his hand between her legs over the pants she was wearing. Z. moved her legs to the side. Mr. Jaime told Z. that they "would get along, that he could be [her] friend and over time [they] would develop feelings for each other." On the drive home, Z. sat in the back seat of the car. Z. had a friend named Leslie who, on the weekends, visited her father, who

lived in the house on Dell Place. Z. knew Leslie's father as "Santos." Z. told Santos what had happened in the car.

The second time Mr. Jaime drove Z. to her appointment to be vaccinated, he asked why she previously sat in the backseat of the car and she said that she was not comfortable. On all subsequent trips to her appointments, Z. sat in the front seat of Mr. Jaime's car. Mr. Jaime told Z. that she was pretty, that he was lonely, that he liked her, and that he wanted someone to talk to. Z. responded by putting on her earphones. The third time Mr. Jaime drove Z. to an appointment to be vaccinated, Mr. Jaime touched her leg around her knee and told her "not to be scared because he wasn't going to do anything bad to [her]." Z. "just moved to the side."

Thereafter, Mr. Jaime would enter Z.'s bedroom two to three times per week. Z. testified that he must have had a key to the room because her father always locked the door when he left for work. When Mr. Jaime entered, Z. asked him why he was there and said that she did not want to talk to him. Mr. Jaime said that he "only wanted to talk to" her, asked if she had a boyfriend, and said that she "should talk to [her] dad and tell him that the three of [them] could move into an apartment and he could help pay for it." Z. responded that her father was working, that they had money, and that she did not need anything. Mr. Jaime said "that he had money and that he could give [Z.] a car." Z. "said no."

After Z. started attending school, there was a day when she "was feeling a little stressed." On that day, she stayed home from school and was starting to smoke marijuana when Mr. Jaime knocked on the door. Mr. Jaime told Z. that her father had called him

because she had not gone to school and he was going to take her there. Mr. Jaime entered her room and "said that he could get [her] marijuana and some other things." Z. "told him no, that it was fine, that [she] did not need it." Mr. Jaime then took her to school. Z. did not tell anyone about what happened.

At the time of these events, Z.'s mother lived in El Salvador. Z. communicated with her by phone and sometimes they had video calls. Z. did not tell her mother what was happening because they "didn't have a place to go." On one morning, when Z. was on a video call with her mother, Mr. Jaime entered her room. Z. placed the phone on a windowsill so that her mother was looking into the room. Mr. Jaime sat on the bed, started talking to Z. and touching her foot with his hand. Z. felt "uncomfortable." When Z. started to get up, Mr. Jaime grabbed her and put her on the bed. He kissed her "from top to bottom," grabbed her hands, and started "lowering" her pants. Z. testified that Mr. Jaime hugged her, kissed her cheek, her stomach under the covers and "started kissing [her] down lower." When he lowered her pants, he "started kissing [her] lower" under her clothes in her "intimate area," meaning her vagina. Z. "wanted to get him off of [her] but [she] couldn't . . . [b]ecause he was stronger than [her]." At that point, Z. heard a car outside. Mr. Jaime got up, opened the window, and then left the room and ran upstairs. Santos came into the house, saw that Z. was crying, and asked what was wrong. She told him that Mr. Jaime had "gotten into [her] room" and "had kissed [her] body."

At some point, Mr. Jaime's son, C., began living in the house. Sometimes, Z. went outside and spoke with him. She told him that his father was entering her room and that he was "very different" with her. C. told Leslie everything that had happened from the

time Mr. Jaime first started entering her room. Z. lived in the house for seven months and moved out in October 2017.

Z.'s mother, A., testified that she had known Mr. Jaime for ten years. He was a work colleague of her husband's and they had been friends with him and his wife in El Salvador. A. testified that from the video call, she observed Mr. Jaime enter Z.'s room, pull up her blouse, and "start[] lowering her black pants." She observed Z. on the bed and Mr. Jaime kissing Z.'s neck and below her chest, under her shirt. She saw Mr. Jaime lower Z.'s black pants and then kneel down. She stated that Mr. Jaime's face was near Z.'s vagina. At that point, A. could only see Mr. Jaime's head and not what he was doing. A. heard a car beep and then observed Mr. Jaime leave Z.'s room. A. then spoke to Z., and both started to cry.

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

DISCUSSION

I. The circuit court did not err in granting the State's motion to admit statements of the children and evidence of other crimes.

In his Brief, with respect to the first question presented, Mr. Jaime sets forth two contentions. First, he argues that the circuit court erred in admitting the statements made by Y. to Ms. Kassembe during her interview at the Child Advocacy Center. Second, he contends that the circuit court erred in finding that the testimony of each victim, X., Y., and Z., was mutually admissible in each case against him. We shall discuss each contention separately.

A. Admission of Statements Made by Y. to Ms. Kassembe

Mr. Jaime argues that the circuit court erred in admitting Y.'s prior statement to Ms. Kassembe under § 11-304 of the Criminal Procedure ("CP") Article of the Maryland Code, also known as the "tender years" statute. CP § 11-304 is a statutory exception to the rule against hearsay. Maryland Rule 5-801 defines hearsay as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). A "statement" includes oral and written assertions, as well as nonverbal conduct intended as an assertion. Md. Rule 5-801(a). A hearsay statement is generally not admissible, "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802.

Relevant to this appeal, CP § 11-304 provides that a court may admit into evidence in a criminal proceeding "an out-of-court statement to prove the truth of the matter asserted in the statement made by a child victim or witness" who is "under the age of 13 years" and "is an alleged victim . . . in the case before the court concerning" certain specified crimes. CP § 11-304(b). Those crimes include, but are not limited to, child abuse under CR § 3-601 or § 3-602, rape or sexual offense under CR §§ 3-303 through 3-307, and attempted rape in the first or second degree under CR §§ 3-309 and 3-310. CP § 11-304(b)(1)(ii). "An out-of-court statement may be admissible under [CP § 11-304] only if the statement was made to and is offered by a person acting lawfully in the course of the person's profession when the statement was made[,]" including, but not limited to, a person who is a social worker. CP § 11-304(c)(4). The out-of-court statement by a child

victim "may come into evidence in a criminal proceeding . . . to prove the truth of the matter asserted in the statement" if the statement "is not admissible under any other hearsay exception" and "the child victim or witness testifies." CP § 11-304(d)(1)(i) and (ii). A child victim's or witness's out-of-court statement is admissible "only if the statement has particularized guarantees of trustworthiness." CP § 11-304(e)(1).

The statute sets forth factors that the trial court "shall consider" when determining whether a statement has particularized guarantees of trustworthiness, but in doing so, the trial court "is not limited to" these factors. CP § 11-304(e)(2). They are:

> (i) the child victim's or witness's personal knowledge of the event;
>
> (ii) the certainty that the statement was made;
>
> (iii) any apparent motive to fabricate or exhibit partiality by the child victim or witness, including interest, bias, corruption, or coercion;
>
> (iv) whether the statement was spontaneous or directly responsive to questions;
>
> (v) the timing of the statement;
>
> (vi) whether the child victim's or witness's young age makes it unlikely that the child victim or witness fabricated the statement that represents a graphic, detailed account beyond the child victim's or witness's expected knowledge and experience;
>
> (vii) the appropriateness of the terminology of the statement to the child victim's or witness's age;
>
> (viii) the nature and duration of the abuse or neglect;
>
> (ix) the inner consistency and coherence of the statement;
>
> (x) whether the child victim or witness was suffering pain or distress when making the statement;
>
> (xi) whether extrinsic evidence exists to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim's or witness's statement;
>
> (xii) whether the statement was suggested by the use of leading questions; and

(xiii) the credibility of the person testifying about the statement.

CP § 11-304(e)(2).

The statute requires that the trial court, in a hearing outside the presence of the jury, "make a finding on the record as to the specific guarantees of trustworthiness that are in the statement" and "determine the admissibility of the statement." CP § 11-304(f). In making those determinations, the court must examine the child victim or witness in his or her "chambers, the courtroom, or another suitable location that the public may not attend unless[,]" among other things, "the court determines that an audio or visual recording of the child victim's or witness's statement makes an examination of the child victim or witness unnecessary." CR § 11-304(g)(1).

In the case at hand, Mr. Jaime argues that the circuit court "took all three of the alleged victim's testimony at their word and did not question the veracity of the statements for internal consistency, or even plausibility." He maintains that the court "was not even concerned about the lack of DNA or lack of corroboration." Mr. Jaime further argues that "the court ruled that the three victim's recitations of their crimes were sufficiently similar in nature, despite them being each entirely different, even when evaluated at face value." We are not persuaded.

1. Standard of Review

Our review of "[w]hether the trial court properly admitted a particular statement under an exception to the rule against hearsay often requires separate inquiries with divergent standards of review." *Curtis v. State*, 259 Md. App. 283, 298 (2023). "It is well established that a trial court's ultimate determination of whether particular evidence is

hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Smith v. State*, 259 Md. App. 622, 666–67 (2023) (cleaned up). Thus, "[w]e review for clear error the trial court's preliminary findings as to the factual circumstances under which the statement was made." *Curtis*, 259 Md. App. at 298. A "judge's decision is not clearly erroneous if the record shows that there is legally sufficient evidence to support it." *Kusi v. State*, 438 Md. 362, 380 (2014) (cleaned up).

The same "clearly erroneous" standard of review applies to the court's factual findings on particularized guarantees of trustworthiness under CP § 11-304(e). *Jones v. State*, 410 Md. 681, 700 (2009). "A holding of 'clearly erroneous' is a determination, as a matter of law, that, even granting maximum credibility and maximum weight, there was no evidentiary basis whatsoever for the finding of fact." *State v. Brooks*, 148 Md. App. 374, 399 (2002). Thus, when reviewing a claim of clear error, "[t]he concern is not with the frailty or improbability of the evidentiary base, but with the bedrock non-existence of an evidentiary base." *Id.*

2. Analysis

On February 21, 2024, the circuit court held a hearing pursuant to CP § 11-304, on the State's notice of intent to introduce Y.'s prior statement to Ms. Kassembe. Ms. Kassembe testified that she was a social worker and forensic interviewer employed by the Prince George's County Department of Social Services and assigned to the Child Advocacy Center. She interviewed Y. at the Child Advocacy Center on March 23, 2023, when Y. was eleven years old, in connection with her claim of sexual assault. The State

admitted a recording of the interview as State's Exhibit 1, and the judge stated that he had reviewed it.

Defense counsel argued that there were not specific guarantees of trustworthiness to allow for the video of Y.'s forensic interview, and the hearsay statement it contained, to be admitted in evidence. The trial court disagreed. It found that Y. was under the age of thirteen, that her statement was made to a social worker, that the statement was not admissible under any other hearsay exception, and that she was going to testify. The court then proceeded to consider the "particularized guarantees of trustworthiness." Pertinent to the question before us, the court found no apparent motive to fabricate:

> Any apparent motive to fabricate, there's been nothing presented to the Court to demonstrate that the child witness in this case has a motive to fabricate, whether it be because of an interest, a bias or a corruption or coercion. Now the Court is not blind to the fact that prior to this case there are two other circumstances involving the same Defendant at the home, alleged to have occurred at the home, where this child was staying. But this incident, at least as described by this child, as to things that happened to her, as she describes them are somewhat different from the incidents involving the other alleged victims
>
> So to the extent that there is some belief, none of which has been raised here, but I do want to say that the Court is not blind to the fact that these other things did occur and that these -- and while the alleged incidents here are alleged to have occurred during the same time period to some degree, then the child's description of what happened to her doesn't appear to have been given to her from some other source. So that's the point the Court's trying to get at. It doesn't believe that she was told to make these claims because something may have happened to someone else.

The court addressed the consistency and coherence of Y.'s statement, stating:

> The consistency and coherence of the statement, the Court finds that this statement, in context, was coherent and consistent. There was no pain or distress. We're talking about past actions. This was an interview that was conducted after the alleged events had occurred based upon, I guess, at some point some disclosure.

The court also addressed Mr. Jaime's opportunity to commit the alleged acts as follows:

> Whether extrinsic evidence exists to show the Defendant had the opportunity to commit the act complained of in the child victim's statement, and clearly the Defendant being a household member who saw the child when the child would visit clearly had access, the ability and the opportunity commit the acts complained of. And there's been no evidence to the contrary that he did not.

The court found Y. "to be a credible witness" and noted that the court had "not been presented with anything that would demonstrate that she lacked credibility." After considering the required factors, and finding specific guarantees of trustworthiness, the court determined that Y.'s statement was admissible.

Mr. Jaime's arguments focus on just two of the factors—the inner consistency and coherence of Y.'s statement and the opportunity of Mr. Jaime to commit the act complained of. *See* CP § 11-304(e)(2)(ix) and (xi). Mr. Jaime does not identify anything in Y.'s statement, or direct our attention to any other evidence, to support his position that the statement was internally inconsistent or implausible. In the circuit court, defense counsel argued that Y.'s statements were "rather generalized and not specific in regards to detail[,]" but Mr. Jaime does not identify any portion of Y.'s statement that he claims was too vague or general. Mr. Jaime's argument that "the court took all three of the alleged victim's [sic] testimony at their word and did not question the veracity of the statements for internal consistency, or even plausibility," is without merit. In addressing any apparent motive to fabricate, the court took note of the two other cases which involved allegations against Mr. Jaime for acts that occurred in the home where Y. stayed

"during the same time period to some degree." The court specifically recognized that Y.'s description of what happened to her was "somewhat different from the incidents involving the other alleged victims."

Defense counsel argued that Mr. Jaime did not have the opportunity to commit the acts because Y.'s grandmother, Q., was present in the same bed when the alleged acts occurred. The court recognized that Q. was in the bed, but also took note of Y.'s statement that the acts occurred when her grandmother was either asleep or on the phone. In light of the statements that Q. was not viewing the acts when they occurred, the court concluded that there was "ample opportunity for this abuse to happen." Mr. Jaime's argument that the court "was not even concerned about the lack of DNA or lack of corroboration" is immaterial because the lack of such evidence would not impact in any way his opportunity to carry out the alleged offenses. Our review of the record convinces us that the circuit court's factual findings were not clearly erroneous.

B. Mutual Admissibility of Testimony of All Three Alleged Victims

Mr. Jaime's second contention is that the circuit court erred in determining that the testimony of all three alleged victims, X., Y., and Z., was mutually admissible in each case against him. Specifically, Mr. Jaime argues:

> None of the alleged victims testified as to a "signature" or "modus operandi" manner of its commission, and neither did they testify as to any other motive, or absence of mistake, sufficient to meet the thresholds of [*State v.*]*Faulkner*, [314 Md. 630 (1989)]. More importantly, the court paid no analysis to the evaluation of undue prejudice and harm to the rights of the accused, when it ruled that all three victims could interchangeably testify at either of three separate trials. Clearly, the risk and undue harm the Appellant was exposed by this ruling was insurmountable by even a skilled lawyer.

> There was no question that all three alleged victims identified and knew the Appellant through family ties, but that was not an issue in the case that was contested at any rate. Therefore, the State cannot, and the Court was wrong to rely, if any, on the identity prong of the MIMIC exceptions outlined in Faulkner, to make any ruling on mutual admissibility.

1. Underlying Proceedings

On February 16, 2024, the circuit court held a hearing on the State's motion to use evidence of other sexually assaultive behavior or, in the alternative, evidence of other crimes, wrongs, or acts in its case-in-chief. The State sought to admit the evidence under § 10-923 of the Courts and Judicial Proceedings ("CJP") Article of the Maryland Code and Maryland Rule 5-413.[6] The State also argued at the hearing, that, in the alternative, the evidence of other sexually assaultive behavior was admissible under Maryland Rule 5-404(b)[7] to show opportunity, intent, and common scheme.

Generally, the Maryland Rules of Evidence and common law prohibit the use of character evidence "to show a person's propensity to act in accordance with their

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[6] Maryland Rule 5-413 provides:

> In prosecutions for sexually assaultive behavior as defined in Code, Courts Article, § 10-923(a), evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admitted in accordance with § 10-923.

[7] Maryland Rule 5-404(b) provides:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts, including delinquent acts as defined in Code, Courts Article § 3-8A-01, is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

character traits or prior bad acts[.]" *Woodlin v. State*, 484 Md. 253, 261 (2023). That prohibition is an attempt to prevent admission of evidence that could allow the jury to believe "that the defendant is a bad person who should be punished regardless of his or her guilt of the charged crime, or to infer that he or she committed the charged crime due to a criminal disposition." *Id.* at 265 (cleaned up).

One exception to that general rule is found in CJP § 10-923, which provides that in a criminal trial for certain crimes, including, but not limited to, sexual abuse of a minor under CR § 3-602, "evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admissible, in accordance with this section." CJP § 10-923(b). "Sexually assaultive behavior" is defined as an act that constitutes any of a list of sexual crimes, including sexual abuse of a minor. CJP § 10-923(a)(2). The statute requires the court to "hold a hearing outside the presence of a jury to determine the admissibility of evidence of sexually assaultive behavior." CJP § 10-923(d). Subsection (e) of the statute provides:

> (e) The court may admit evidence of sexually assaultive behavior if the court finds and states on the record that:
>
> (1) The evidence is being offered to:
>
> (i) Prove lack of consent; or
>
> (ii) Rebut an express or implied allegation that a minor victim fabricated the sexual offense;
>
> (2) The defendant had an opportunity to confront and cross-examine the witness or witnesses testifying to the sexually assaultive behavior;
>
> (3) The sexually assaultive behavior was proven by clear and convincing evidence; and

> (4) The probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

CJP § 10-923(e). All four of those criteria must be satisfied before the court may admit the evidence. *Woodlin*, 484 Md. at 268.

In *Woodlin*, the Supreme Court of Maryland, recognizing that CJP § 10-923(e)(4) does not require trial courts to consider any specific factor in balancing probative value against the danger of unfair prejudice, laid out "an illustrative—but not exhaustive—list of appropriate factors that circuit courts *may* consider" when analyzing evidence of other sexually assaultive behavior under both subsection (e)(4) as well as the final exercise of discretion to admit or deny the evidence. *Id.* at 263–64, 278. To determine the probative value of evidence of other sexually assaultive behavior, a court may consider the similarity or dissimilarity of the acts, the "temporal proximity" and "intervening circumstances," and the frequency of the sexually assaultive behavior. *Id.* at 284, 286–87. Unfair prejudice, on the other hand, may include considerations of overshadowing of the crime charged and the jury's knowledge that a defendant previously was punished. *Id.* at 287–88. As for the circuit court's final exercise of discretion to admit the evidence, the need for and the clarity and manner of the evidence may be considered. *Id.* at 289–90.

In the case at hand, the court heard testimony at the motions hearing from X., Y., and Z. Defense counsel argued that the motion should be denied under both CJP § 10-923 and Rule 5-404(b). Specifically, he argued that the prejudicial effect of admitting the evidence "would be tremendous" and that it was not outweighed by the probative value of the alleged acts. With respect to the probative value of the evidence, defense counsel

conceded that there were some similarities in each of the three cases, but argued that there were also "dissimilarities" that would not give the evidence the probative value "the State would like it to." Defense counsel pointed to differences in the frequency of the events alleged by X., Y., and Z., the different locations, differences in the alleged acts, and the differences in the victims' ages. He also argued that the State was "trying to compound the allegations and the evidence so the jury can then believe that . . . these three girls collectively can't be lying." Defense counsel conceded that because X., Y., and Z. were minors at the time of the alleged acts, they could not have consented to them. He also acknowledged that Mr. Jaime's defense was "going to have to be fabrication[,]" although the defense's strategy would change depending on whether the alleged victims were permitted to testify in each of the other cases.

On February 21, 2024, the court announced its ruling from the bench. The court considered the four factors set forth in CJP § 10-923(e). The court found that because the alleged victims were minors, they could not have consented to the alleged acts. Further, based on defense counsel's statements at the hearing, there was either an express or implied allegation that the victims fabricated their allegations of sexual offense. In addition, the court found that Mr. Jaime had an opportunity to confront and cross-examine the victims during the hearing and that the sexually assaultive behavior "was proven by clear and convincing evidence." The court reviewed the testimony of X. and Z. and found that there were similarities between the alleged conduct of Mr. Jaime in both cases, including the age of the victims, that Mr. Jaime entered their rooms and offered them coffee, and that Mr. Jaime told both of them not to tell anyone what happened. The

court concluded that "given the similarities between the acts as alleged by [X.] and [Z.] . . . the probative value does outweigh an[y] unfair prejudice to the Defendant."

As for Y., the court recognized that she was younger than the other victims at the time of the alleged abuse, that she did not have her own room, and that when she visited the home, she slept in the room with Mr. Jaime and Q. The court stated:

> [T]he manner in which the Defendant is described to have touched [Y.] was such that to someone not paying attention and given her age and given her -- given the relationship of the people involved, a person being present may not perceive, who's not looking -- because what was clear by the testimony was that the grandmother was either on her phone or facing in another direction. And what may have been believed to have been tickling or was being described as tickling, as stated to the child, was some other kind of conduct.
>
> The Court's fear because of -- clearly, there's some fear that because of the nature of the incident that if a jury hears about what happened with others, they may be more inclined to believe it happened to [Y.] But -- and the purpose -- this can't be used just for propensity, but it has to be used to show something other than that.
>
> And -- but also, I think given her age and the description, and given any defense that she may have made it up, I think that the Defendant's conduct with the other girls is probative of whether he engaged in the conduct alleged in this -- in the instance involving [Y.].

The court found that the probative value of the evidence substantially outweighed the danger of unfair prejudice to Mr. Jaime and determined that the evidence of other sexually assaultive behavior was admissible against Mr. Jaime.

2. Standard of Review

As we have already noted, CJP § 10-923(e)(4) uses a balancing test to exclude evidence if its probative value is substantially outweighed by a danger of unfair

prejudice.[8] *See Woodlin*, 484 Md. at 268. We review the circuit court's determination under that balancing test using the abuse of discretion standard. *Id.* Under that standard, "the trial court's decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable" to warrant a reversal. *Id.* at 277 (cleaned up). An abuse of discretion occurs when "no reasonable person would take the view adopted by the circuit court." *Id.* (cleaned up).

3. Analysis

From the question presented, Mr. Jaime appears to argue that the circuit court erred in finding mutual admissibility because the requirements of Md. Rule 5-404(b) were not established. That issue is moot because the circuit court did not base its decision on Rule 5-404, but determined that the evidence was mutually admissible under CJP § 10-923. Nevertheless, to the extent that Mr. Jaime argues that "the court paid no analysis to the evaluation of undue prejudice and harm" to his rights, and that the court erred in finding the victims' testimony "sufficiently similar," we shall consider those arguments as a challenge to the court's decision under CJP § 10-923.

In his Brief, Mr. Jaime argues that the victims' "recitation[s] of their crimes" were "entirely different" from one another. That assertion is not supported by the record.

[8] The balancing test in CJP 10-923(e)(4) is the same as the balancing test set forth in Md. Rule 5-403, which excludes evidence if the danger of unfair prejudice substantially outweighs its probative value. This standard does not mean that prejudicial evidence is excluded just because it harms one party's case. *Montague v. State*, 471 Md. 657, 674 (2020). A piece of evidence will fail the balancing test if its prejudicial value "tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission." *Woodlin*, 484 Md. at 265 (cleaned up).

Although there were some differences in the three accounts, there were also significant similarities. The court found, and the evidence showed, that each of the victims "at one time shared a residence" with Mr. Jaime. The court noted that Y. did not live in the same house as Mr. Jaime, but visited on the weekends and stayed in the home with Mr. Jaime and Q. Two of the victims, X. and Y., were Q.'s granddaughters and, therefore, were related to Mr. Jaime. Z. was a close family friend. The victims were all minor girls. X. and Z. were both fourteen or fifteen years old, and Y. was younger, age five to about nine, at the time of the abuse. Many of the incidents of sexually assaultive behavior occurred in bedrooms in Mr. Jaime's house. Both X. and Z. testified that Mr. Jaime entered their rooms and offered them coffee. Each victim testified that Mr. Jaime used his hands to touch them. X. and Y. said Mr. Jaime touched their breasts and between their legs and Z. testified that Mr. Jaime kissed her face, stomach and lower on her body and that he also put his hands between her legs while in a car.

Contrary to Mr. Jaime's assertion, the court did not fail to consider the potential for undue prejudice and harm. The court's ruling, set forth *supra*, shows that the court considered the possibility that "if a jury hears about what happened with" X. and Z., "they may be more inclined to believe it happened to [Y.]" After considering that possibility, and employing the required balancing test, the court determined that the probative value of the evidence outweighed the potential for unfair prejudice and ruled that the evidence was mutually admissible. We find no abuse of discretion in that decision.

II. The circuit court did not err in joining the three cases together for trial.

Mr. Jaime contends that the circuit court erred in joining the three cases together for trial. The sole argument presented by Mr. Jaime in support of that contention is that "[t]his was error as it unduly prejudiced [him] with unreasonably multiplicitous charges and evidence that was not mutually admissible." In his Brief, Mr. Jaime failed to provide any citation to the record or legal authority in support of his contention. Notably, he failed to state that the defense consented to the joinder.

Our review of the record shows that on December 4, 2023, the State filed a motion to join the three cases against Mr. Jaime. The record does not show that Mr. Jaime filed a written opposition to that motion. The court did not take any action on the motion and noted that it would be decided by the trial judge. At a hearing on February 16, 2024, the parties advised the judge that the motion to join the three cases had been denied by the court at a prior hearing. Our review of the record before us did not reveal a transcript of a prior hearing showing the court's denial of the motion.

On February 28, 2024, the State filed a renewed motion for joinder. The record does not show that Mr. Jaime filed a written opposition to that motion. At a hearing on March 18, 2024, defense counsel responded to the State's renewed motion for joinder stating, "[g]iven the Court's previous rulings and decisions and my review of the evidence in the case, we are not opposing the joinder at this point [in] time." The circuit court then granted the renewed motion for joinder "by consent of the Defendant."

In *Brice v. State*, 225 Md. App. 666, 679 (2015), we addressed waiver, stating:

> Generally, a waiver is the intentional relinquishment of a known right, or conduct that warrants such an inference. Waiver extinguishes the waiving party's ability to raise any claim of error based upon that right. Thus, a party who validly waives a right may not complain on appeal that the court erred in denying him the right he waived, in part because, in that situation, the court's denial of the right was not error.

(Cleaned up.)

Here, Mr. Jaime not only failed to file a written opposition to the State's renewed motion for joinder, but he affirmatively waived any objection by consenting to the renewed motion for joinder. Accordingly, Mr. Jaime may not be heard to complain that the trial court erred in joining the cases.

III. The circuit court did not err in denying Mr. Jaime's pre-trial motions to dismiss.

A. Background

Prior to the start of the trial, Mr. Jaime filed two motions to dismiss, one in Z.'s case, number CR-24-000144, and the other in X.'s case, number CT200873X. In those motions, Mr. Jaime alleged various defects in the charging documents. In Z.'s case, Mr. Jaime sought dismissal of counts one and four on the ground that they failed to state a crime. In X.'s case, Mr. Jaime sought dismissal on the ground of multiplicity as to counts two and three, six and seven, eight and nine, eleven and twelve, and thirteen and fourteen. He also claimed that counts fifteen and sixteen failed to state a crime. A hearing on the motions was held on April 22, 2024. At the hearing, Mr. Jaime requested dismissal of counts one and three in Y.'s case, number C-16-23-001318, but later he withdrew that motion.

With respect to the motion to dismiss counts one and four in Z.'s case, the court reserved ruling stating that it would have to hear the evidence at trial before making a decision. As to the motion to dismiss on the ground of multiplicity in X.'s case, the State argued that Mr. Jaime's motion was untimely under Maryland Rule 4-252[9] and that the defense did not file a request for a bill of particulars. The court denied the motion to dismiss as to counts two, three, six through nine, and thirteen and fourteen.[10] As to the motion to dismiss counts fifteen and sixteen, the court reserved ruling to see "what the testimony is during the course of trial" and whether there was sufficient evidence presented to support the charges.

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[9] Maryland Rule 4-252 provides, in part:

> **(a) Mandatory Motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:
>
> (1) A defect in the institution of the prosecution;
>
> (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
>
> (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
>
> (4) An unlawfully obtained admission, statement, or confession; and
>
> (5) A request for joint or separate trial of defendants or offenses.
>
> **(b) Time for Filing Mandatory Motions.** A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

[10] The court's oral ruling did not specifically address the motion to dismiss as to Counts 11 and 12.

B. Analysis

Without identifying any specific case number or victim, Mr. Jaime argues:

> We adopt the defense's specific arguments below at trial and argue the court erred in failing to dismiss the specifically objected counts below. We further add that the court erred in failing dismiss several of these unreasonably multiplicious counts on constitutional grounds, as explained in the law section of this brief.

Mr. Jaime maintains that the State violated his "rights by unduly charging and using both theories of liability (household and course of conduct), which were unnecessary." This "exposed [him] to eight counts of sexual abuse, rather than four counts, and therefore caused a due process and double jeopardy violation—i.e., by expanding the universe of liability into two theories of liability for the exact same offense." According to Mr. Jaime, if the court had granted his motion to dismiss the counts he argued were multiplicitous, he "would have had a fair trial and faced only four of these counts." He argues that "the trial court erred in failing to dismiss the household/member counts of [s]ex [a]buse from the continuing course ones on the same date charged, as well as the identically charged indicted counts on the continuing course of conduct offenses." We disagree.

Mr. Jaime's assertion that his due process and constitutional rights were violated was not raised below in support of his motion to dismiss. As a result, those issues were not preserved properly for our consideration. *See* Md. Rule 8-131(a). Mr. Jaime's motion to dismiss various multiplicitous charges was premised on the argument that the State would not be able to elicit sufficient evidence of separate acts. If Mr. Jaime desired more particularity as to the State's allegations in each count, he was free to file a bill of

particulars pursuant to Md. Rule 4-241. *See Jones v. State*, 303 Md. 323, 339 (1985) (confirming "the manner or means of committing the offense, if not otherwise provided by the prosecutor, was obtainable through a bill of particulars"). "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." *McMorris v. State*, 277 Md. 62, 70 n.4 (1976). As Mr. Jaime acknowledged at the hearing on the motions to dismiss, he did not file a bill of particulars.

Here, the circuit court's refusal to grant Mr. Jaime's motions to dismiss was not erroneous. The court was not permitted to rule on the sufficiency of the evidence when considering a pretrial motion to dismiss. *See State v. Taylor*, 371 Md. 617, 644 (2002) (determining that court should have limited itself to considering the legal sufficiency of the indictment on its face and not rendered a decision on the sufficiency of the evidence). Relying on *Taylor*, we have held that when a motion to dismiss is considered by the trial court, the court should consider whether the information or indictment charges a crime; the court "should not consider the issue of whether the State has sufficient evidence to prove that crime." *State v. Hallihan*, 224 Md. App. 590, 610–11 (2015). As Mr. Jaime's motions to dismiss sought to obtain in advance of trial a judgment on the sufficiency of the evidence, the court did not err in denying them or reserving its ruling until the appropriate time at trial.

IV. The circuit court did not err in admitting Ms. Kassembe's testimony.

Mr. Jaime contends that the trial court erred in admitting the testimony of "Clinical Social Worker Kassembe," "over the defense objection as an expert." According to Mr. Jaime:

> This was error, as Ms. Kessembe was not qualified to render an opinion in this case. Additionally, even though defense counsel did not object to this testimony on the grounds that it impinged in the case improper ultimate question expert testimony and did not seek a *Daubert-Rochkind* [11] hearing to exclude it; the Court is presumed to know the law and should have *sua sponte* considered whether this testimony was admissible under this new standard and conducted a gate-keeping hearing. This was plain error of the court.

Ordinarily, we will not review an issue unless it has been raised in or decided by the trial court. Md. Rule 8-131(a). Although we may exercise our discretion to address unpreserved issues, appellate courts should rarely do so because "considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge." *Chaney v. State*, 397 Md. 460, 468 (2007). In light of such considerations, appellate courts consistently have held that, before exercising discretion to find plain error, the following conditions must be satisfied:

> (1) there must be an error or defect—some sort of deviation from a legal rule —that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the proceedings; and (4)

[11] This is a reference to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Rochkind v. Stevenson*, 471 Md. 1 (2020). In *Daubert*, the Supreme Court of the United States replaced the longstanding "general acceptance" test for admissibility of scientific evidence with a flexible framework of factors designed to assess the reliability of expert opinions. Maryland formally adopted this standard in *Rochkind*. 471 Md. at 26. In Maryland, "[e]xpert testimony is governed by the *Daubert-Rochkind* standard and Maryland Rule 5-702." *Covel v. State*, 258 Md. App. 308, 329 (2023).

> the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Beckwitt v. State, 477 Md. 398, 464 (2022) (cleaned up). In deciding whether to exercise such discretion, we are mindful that appellate review of unpreserved issues is "a rare, rare phenomenon[,]" *Morris v. State*, 153 Md. App. 480, 507 (2003), "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial[,]" *Newton v. State*, 455 Md. 341, 364 (2017) (cleaned up).

Mr. Jaime is unable to establish the first required condition for plain error review, that there must be an error. The record makes clear that there was no error with respect to the trial court's admission of Ms. Kassembe's testimony without a *Daubert-Rochkind* hearing. Contrary to Mr. Jaime's assertion, the trial court did not admit Ms. Kassembe as an expert witness at either the pre-trial motions hearing or at trial. At trial, the State asked Ms. Kassembe whether, based on her experience and training, Y. used language typical of a child her age during her interview. Defense counsel objected on the ground that Ms. Kassembe was "never qualified as an expert" and, therefore, could not state her opinion. The State took the position that Ms. Kassembe's testimony was admissible as a lay opinion pursuant to Maryland Rule 5-701.[12] At trial, the following colloquy occurred:

> [DEFENSE COUNSEL]: She was never qualified as an expert. And so she can't state her opinion.
>
> [PROSECUTOR]: Your Honor, for the type -- in foundational questions, I asked if -- because of her experience she had gone ahead and learned what

[12] Maryland Rule 5-701 governs the admission of lay testimony. It provides that a lay witness may testify to opinions or inferences that are "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

was age-appropriate language. Someone doesn't have to be qualified as an expert. For example, a teacher could testify that in her experience, after teaching for 15-plus years, she's acquired the ability to determine whether a child is speaking age appropriate. And while we did notice a file of expert, we're not qualifying her as an expert as we don't believe that we need to for this opinion or this specific question.

THE COURT: She was noted as an expert.

[PROSECUTOR]: If we were going to, but I'm not qualifying her as an expert. I don't believe that's necessary for this specific --

[DEFENSE COUNSEL]: I don't recall specifically if she was notified as an expert. I'd have to look.

THE COURT: What rule are you relying on for nonexpert opinion or lay opinion.

[PROSECUTOR]: It would just be the lay opinion.

THE COURT: Which is which rule?

. . .

[PROSECUTOR]: 5-701. And so the rule says that "An opinion may be offered if its rationally based upon firsthand perceptions."

THE COURT: Wait, say that again.

[PROSECUTOR]: Sure. It says that "Opinions can be offered if the opinion is rationally based upon firsthand perceptions of the witness, and second, that the opinion facilitates an understanding of the witness's testimony. Or in the language of the rule is helped to a clear understanding of the witness's testimony or the determination of a fact at issue."

[DEFENSE COUNSEL]: Well, what is the fact at issue when you're asking is it age --

. . .

[DEFENSE COUNSEL]: Well, Rule 5-701 basically says that "Nonexpert witness is prohibited from expressing an opinion." And there are some exceptions. One is a "Special familiarity, in which the courts do not permit nonexpert witnesses to express opinions about those kinds of things that they have become familiar with."

. . .

[DEFENSE COUNSEL]: "The courts do not permit nonexpert witnesses to express opinions about those kinds of things that they have become familiar with. A witness is permitted to express an opinion on handwriting if she is

sufficiently familiar with the handwriting of the person whose signature is disputed, opinion about speed of a vehicle."

And "A witness can express an opinion about a person's age, whether someone is angry, arrogant, boisterous, excited, nervous, or under the influence of alcohol because these are kinds of observations we daily admit." So the difference is she has to be qualified as an expert because these -- the jurors aren't going to understand age-appropriate language or --

THE COURT: Unless they're parents.

[DEFENSE COUNSEL]: But we can't assume that every juror is a parent.

THE COURT: No, you're right.

[DEFENSE COUNSEL]: So I do think she would have to be qualified. Because it's her specialized area of knowledge. It's not like lay witnesses knowledge in terms of whether or not somebody is intoxicated. Anybody in that jury could presumably say --

THE COURT: Well, you're making an assumption that people have seen people who have been drunk.

[DEFENSE COUNSEL]: That is correct. That is correct. But I think that is more common occurrence than what this witness would be testifying to as it relates to child-appropriate language.

[PROSECUTOR]: And Your Honor, I would just simply add that the rule also requires "A foundation that's necessary to establish that the witness has had sufficient perceptions to form an opinion based upon those perceptions of the witness," which is why in the beginning of my question I asked that of those 300 interviews, was she able to get familiar with what was age-appropriate language.

It also says, "The degree to which a witness may give an opinion of course is predicated on part upon whether and the extent to which the witness has sufficient life experiences that would permit making a judgment as to the matter involved."

THE COURT: So again the Rule 5-701 says that "If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are, one, rationally based on the perception of the witness, personal knowledge, and two, helpful to a clear understanding of the witness's testimony or the determination of fact at issue."

So I think we have both. I'm going to allow it. I'm going to note your objection.

[DEFENSE COUNSEL]: Okay, please note my objection for the record.

> THE COURT: Your objection is noted but I'm going to overrule the objection.

As Ms. Kassembe was neither offered nor admitted as an expert witness, no *Rochkind-Daubert* hearing was required. For that reason, there was no error, much less plain error, on the part of the trial court in failing to have such a hearing. Thus, we deny Mr. Jaime's request that we exercise our discretion to grant plain error review. As Mr. Jaime does not present any challenge to the trial court's decision to admit Ms. Kassembe's lay opinion testimony as to the age-appropriateness of Y.'s language, we need not address that issue.

V. There was sufficient evidence to sustain Mr. Jaime's convictions.

Mr. Jaime challenges the sufficiency of the evidence to sustain his convictions. In reviewing a challenge to the sufficiency of the evidence, we "examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Beckwitt*, 477 Md. at 429 (cleaned up); *accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In our review of the record, "we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State" as the prevailing party. *Id.* (cleaned up). "Our role is not to review the record in a manner that would constitute a figurative retrial of the case." *State v. Krikstan*, 483 Md. 43, 63 (2023). To the contrary, "[w]e give due regard to the fact-finder's findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Potts v. State*, 231 Md. App. 398, 415 (2016) (cleaned up).

Mr. Jaime sets forth several arguments in support of his contention that the evidence was insufficient to sustain his convictions. After addressing the briefing in the instant case, we shall address Mr. Jaime's arguments, *seriatim*.

A. Inadequate Briefing

Preliminarily, we address the inadequate briefing in this case. On page 23 of Mr. Jaime's brief, he states:

> In this case, the Appellant adopts all arguments made below by his trial counsel in furtherance of judgment of acquittal of all charges below, despite counsel's failure to seek a Bill of Particulars prior to trial. In addition, Appellant further asserts that the State failed to prove the legal elements of the crimes in counts 1-16.

Thereafter, in footnote 3, on page 24 of Mr. Jaime's brief, he states, in part:

> We also incorporate all of trial counsel's arguments in his motion for judgment of acquittal on all three indictments that were joined for trial, but which were denied by Judge Engel. (T11, Trans 50-52: Lines 3-1.) We do reiterate the court erred based on the preserved argument of counsel below[.]

Those portions of Mr. Jaime's argument are inadequate. Maryland Rule 8-504(a) requires a party's brief to include several items, including, but not limited to a "concise statement of the applicable standard of review for each issue" and "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(5) and (6). We may dismiss an appeal "or make any other appropriate order with respect to the case" for a party's failure to comply with the rule. Md. Rule 8-504(c).

Maryland's appellate courts have made clear that "arguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999); *see also DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a

point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."). As we explained in *Van Meter v. State*, 30 Md. App. 406, 408 (1976), "it is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested." (Cleaned up). An appellant "is required to provide argument in his [or her] brief to support his [or her] position." *Id.* "We cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position." *Id.* at 408; *see also Federal Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457–58 (1979) ("[I]t is necessary for the appellant to present and argue all points of appeal in his initial brief. As we have indicated in the past, our function is not to scour the record for error once a party notes an appeal and files a brief.").

In *Holiday Universal Club of Rockville, Inc. v. Montgomery County*, the appellant attempted to incorporate "as if fully set forth in the brief" arguments made in a memorandum of law filed in the circuit court and included in the record extract. 67 Md. App. 568, 570 n.1 (1986). Noting the requirement to provide argument in support of a position, we stated that "[t]his practice is improper[.]" *Id.; see also Rosenberg v. Rosenberg*, 64 Md. App. 487, 523 n.10 (1985) (finding issues were not properly presented for review when appellant attempted to raise multiple issues by referring appellate court to portions of the record extract instead of setting forth arguments in his brief).

Further, a contention may be deemed waived if an appellant in its brief raises an argument but cites no authority for its position. *See Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument was "completely devoid of legal authority"); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (holding that failure to provide legal authority to support contention waived that contention). "It is not our function to seek out the law in support of a party's appellate contentions." *Anderson*, 115 Md. App. at 578.

In the case at hand, we decline to review the assertions identified *supra* because Mr. Jaime failed to set forth his arguments with particularity. He did not include sufficient factual or legal argument, sufficient citation to the record, or sufficient citation to legal authority. We note that Mr. Jaime did not identify the particular underlying case(s) he was referencing. He also included a reference to "T11," an apparent abbreviation for a source that was not identified by either party. For those reasons, we conclude that Mr. Jaime waived the issues identified above and we shall not consider them.

We also take note that Mr. Jaime included in his brief a section titled "STATEMENTS OF THE LAW AND STANDARDS OF REVIEW," but did not include in that section, or anywhere else in his brief, a concise statement of the applicable standard of review for a challenge to the sufficiency of the evidence. Notwithstanding that failure, we shall address the following challenges to the sufficiency of the evidence that were set forth in Mr. Jaime's brief.

B. Jurisdiction

Mr. Jaime argues that the State failed to prove "that all of the counts in the indictment alleging sexual assaults transpired in Prince George's County, Maryland, and to the best of our reading of the transcripts, none of the State's victims actually testified that the address where the victims resided or lived while Mr. Jaime was there, was in Prince George's County, Maryland." This argument is without merit.

In a criminal case tried by a jury, "the only way to raise and to preserve for appellate review the issue of the legal sufficiency of evidence is to move for a judgment of acquittal on that ground." *Fraidin v. State*, 85 Md. App. 231, 244 (1991). Under Rule 4-324(a), a criminal defendant who moves for judgment of acquittal must "state with particularity all reasons why the motion should be granted." A defendant "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008). The defendant is required to "argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient." *Poole v. State*, 207 Md. App. 614, 632 (2012) (cleaned up).

In support of his argument, Mr. Jaime directs our attention to pages 32-33 of the trial transcript for April 25, 2025. That portion of the transcript shows that, at the close of the State's case, defense counsel requested judgment of acquittal as to case number C-16-CR-23-001318, which involved Y. Among other things, defense counsel argued that "for the case ending in 1318 on [Y.], I don't believe anybody testified specifically as it relates to that case that the 8 Dell Place residence was in Prince George's County, so that would be my first argument to grant a Motion for Judgment of Acquittal as it relates to Counts 1

through 4." Defense counsel also made arguments in support of motions for judgment of acquittal as to the other cases, CT20-0873X, which involved X., and C-16-CR-24-000144, which involved Z., but none of those arguments included a claim that the State failed to prove that the alleged acts occurred in Prince George's County. As Mr. Jaime did not raise the issue of jurisdiction below as to either X. or Z., that issue was not preserved as to those cases.[13]

In Y.'s case, at the close of all the evidence, defense counsel again requested judgment of acquittal. His argument was that there was insufficient evidence as to counts 1, 3, 5, and 7 of the indictment because Y. did not articulate specific instances that would amount to three or more violations of CR §§ 3-303, 3-304, or 3-305. Defense counsel did not specifically renew his prior motion, nor did he raise the issue of jurisdiction at that time. Nevertheless, in announcing its decision to deny the motion for judgment of acquittal, the judge stated, "I do take into account the arguments previously made." We shall consider the issue of jurisdiction only as it pertains to the case involving Y.

Our review of the record, in the light most favorable to the State, reveals that there was sufficient evidence that the alleged sexual assaults of Y. occurred in Prince George's County. Y. testified that Mr. Jaime touched her "private areas" with his hands on more

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[13] Even if appellant had argued the issue of jurisdiction in the cases involving X. or Z., reversal would not be required because both women testified that the crimes they alleged occurred in Prince George's County. X. testified that she was sexually assaulted by appellant at her grandmother's house, located at "8 Dell Place, Laurel, Maryland 20707[,]" which was in Prince George's County, Maryland. Similarly, Z. testified that she was sexually abused when she and her father were living in appellant's home at 8 Dell Place, which was in Prince George's County, Maryland.

than one occasion when she was between the ages of five and eight or nine. When asked where this happened, Y. stated, "[i]n his and my grandma's house." Y. was shown a photograph that was marked as State's Exhibit 1, and she testified that it depicted "[t]heir house" where the touching happened. Y.'s mother was also shown State's Exhibit 1. She testified that the address of the home was "8 Dell Place, Laurel, Maryland." In addition, Laurel Police Detective Ashley Stephens, who was assigned to investigate Y.'s case on February 8, 2023, testified that during the course of her investigation she determined that the sexual assaults occurred at "8 Dell Place, Laurel, Prince George's County, Maryland." Based on that evidence, the trial court did not err in denying the motion for judgment of acquittal in Y.'s case.

C. Sexual Abuse of a Minor as to Z.

In Z.'s case, number C-16-CR-24-000144, Mr. Jaime was charged with four counts of sexual abuse of a minor in violation of CR § 3-602(b)(2), and one count of sexual solicitation of a minor in violation of CR § 3-324. In count one, the charge of sexual abuse of a minor was based on the allegation that Mr. Jaime touched Z.'s hips, in count two, that Mr. Jaime kissed Z., in count three, that Mr. Jaime engaged in cunnilingus with Z., and in count four, that Mr. Jaime offered Z. money and goods in exchange for vaginal intercourse. It appears from his brief that Mr. Jaime challenges the sufficiency of the evidence with respect to his convictions for counts one and four. He argues that the charge of sexual abuse of Z. was "based on the alleged touching of her hips, which is conduct nowhere to be found in the 3-602 statute." In support of his arguments, Mr. Jaime references "(T8., pg. 12-13, line. 17 –)." Neither party identified a transcript or any

other material as "T8." He also argues that "on Count 4, which alleged sexual abuse of [Z.] based on [Mr. Jaime's] alleged offering of money for sexual intercourse; this alleged misconduct is not typified or enumerated in 3-602 as an element of the crime either." He asserts that we "should grant a new trial as these charges should have been dismissed." Mr. Jaime's contentions are moot.

At the conclusion of the State's case, the court granted judgment of acquittal as to count four. As for count one, defense counsel made several arguments including that Z. never testified that Mr. Jaime touched her hips. The trial court denied Mr. Jaime's motion for judgment of acquittal because Z. testified that Mr. Jaime "did pull down her pants" and "[i]n order to pull down someone's pants you have to touch their hips." But later, at the close of all the evidence, the court granted the motion for judgment of acquittal as to count one, stating:

> So the Court understands the argument from the State with respect to Count 1, that he touched her hips, that there is an argument that he had to touch her hips in order to get her pants down. I don't know necessarily if there's sufficient evidence. At this point the Court is at the burden of whether or not a reasonabl[e] juror could find beyond a reasonable doubt that the Defendant had touched [Z.'s] hips. There's absolutely no testimony about the Defendant touching her hips. And I understand the argument, but the Court is going to grant as to Count 1.

Because Mr. Jaime was granted judgment of acquittal as to both counts one and four, his apparent challenge to the sufficiency of the evidence for those counts is moot.

D. Evidence of Sexual Gratification

Mr. Jaime contends that the evidence was insufficient to sustain his convictions because "none of the alleged victims testified that [Mr. Jaime] derived sexual

gratification from the touching, or that [he] was erect when he touched them." Further, he argues that "none of the alleged victims testified that [he] uttered sexual or erotic verbal statements during the touching such that sexual gratification can be inferred." Preliminarily, we note that no argument pertaining to the sexual gratification of Mr. Jaime was made in the trial court with respect to Y.'s case, number C-16-CR-23-001318, or Z.'s case, number C-16-CR-24-000144. As a result, Mr. Jaime's argument, as it pertains to Y. and Z., was not preserved properly for our consideration. *See* Md. Rule 8-131(a).

In case number CT200873X, which involved X., Mr. Jaime was charged in count fifteen with sexual abuse of X., a minor, by a household member on or about May 31, 2020 through June 7, 2020, in violation of CR § 3-602(b)(2). In count sixteen, Mr. Jaime was charged with engaging in sexual contact with X. without her consent on or about May 31, 2020 through June 7, 2020, in violation of CR § 3-308(b)(1). At the close of the State's case, defense counsel argued that Mr. Jaime was entitled to judgment of acquittal on both counts, stating:

> I think the testimony from [X.], it was the weeks leading up to June 8th -- I think she said two weeks prior or a week prior. But she described it as inappropriate behavior -- hugging and touchy-feely. It wasn't specific in that it was for sexual gratification. And, therefore, I would ask the Court to grant a Motion for Judgment of Acquittal as to Count 15 and Count 16. I don't believe -- there's a lack of sufficient evidence to overcome a Motion for Judgment of Acquittal.

At the close of all the evidence, defense counsel stated, "I would incorporate my previous arguments as to all counts." As to count fifteen, defense counsel argued that the evidence was insufficient "because there was no allegation of a sex act or sex abuse from

May 31st of 2020 through June 7th of 2020." As to count sixteen, defense counsel stated, "I would argue Count 16, sex offense in the fourth degree, I don't believe there was testimony of a specific sex offense committed between that time period. I know there was testimony that she felt uncomfortable around [Mr. Jaime], but I don't believe any testimony was elicited as it relates to a fourth-degree sex offense."

At the time of the alleged crimes, CR § 3-602 provided, in part:

> (a) (1) In this section the following words have the meanings indicated.
>
> . . .
>
> (4) (i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.
>
> (ii) "Sexual abuse" includes:
>
> 1. incest;
> 2. rape;
> 3. sexual offense in any degree;
> 4. sodomy; and
> 5. unnatural or perverted sexual practices.
>
> (b) (1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.
>
> (2) A household member or family member may not cause sexual abuse to a minor.

CR § 3-602(a)–(b).

For purposes of CR § 3-602, "family member" was defined then, as it is now, to mean "a relative of a minor by blood, adoption, or marriage." CR § 3-601(a)(3). "Household member" was defined then, as it is now, 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-

601(a)(4). "The language of the statute demonstrates that a violation of CR § 3-602 requires two elements: (1) a person within a specified category (2) must cause sexual abuse to a minor." *Bey v. State*, 259 Md. App. 324, 336 (2023). The definition of "sexual abuse" is not limited to the crimes enumerated in the statute. *Tribbitt v. State*, 403 Md. 638, 648 (2008) ("The list in § 3-602(a)(4)(ii) merely provides examples of acts that come within that definition."); *Cooksey v. State*, 359 Md. 1, 24 (2000) ("[A] charge of sexual child abuse may be sustained on evidence that would not support a conviction under the sexual offense, rape, sodomy, or perverted practice laws.").

CR § 3-308(b)(1) provided that "[a] person may not engage in: (1) sexual contact with another without the consent of the other[.]" CR § 3-301 defined "sexual contact," as used in CR §§ 3-307, 3-308, and 3-314, as the "intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification or for abuse of either party." The phrase "for sexual arousal or gratification, or for the abuse of either party" establishes a specific intent requirement, which may be "deduced from the circumstances surrounding the touching, or from the character of the touching itself." *Bible v. State*, 411 Md. 138, 158 (2009). Circumstances that may demonstrate a specific intent for sexual gratification include:

> whether the defendant and victim were strangers or knew each other; whether either party was undressed; whether anything was spoken between them; whether the touching occurred in public or in a secluded area; whether the defendant displayed any signs of sexual arousal; or whether the defendant behaved in [a] nervous or guilty manner when another person came upon the scene.

Id. As to the character of the touching, "the force of the touching, the motion (was it a pat, a rub back and forth, a circular motion, a brush), the duration, and the frequency are all important." *Id.*

To the extent that it was required, the evidence was sufficient to establish sexual arousal or gratification on the part of Mr. Jaime. X. testified that in the week leading up to June 8, 2020, Mr. Jaime "started getting really touchy," that he "was hugging [her] a lot more than usual," and that he "got up behind [her] a lot." In addition, there was "an incident" where Mr. Jaime got on X.'s bed one morning while she was sleeping and after her grandmother had gone to work. He got "completely on top" of her and "would just kind of cuddle" with her. When asked what she meant by the word cuddling, X. said it was "just like a lot of hugging." X. tried to push Mr. Jaime off, but he did not get off her, although on one occasion, she "completely pushed him off [her] bed." X. stated that she was physically "restrained" and that she felt emotionally "disgusted." She did not say anything to Mr. Jaime while he was doing these things, but he said things such as, "Oh, I love you," or "[n]obody loves you the way I do." Mr. Jaime also offered to buy things for X. From this testimony, a rational jury could infer a specific intent of sexual arousal or gratification on the part of Mr. Jaime.

E. Course of Conduct

Without identifying the case number or victim(s) at issue, Mr. Jaime argues that:

> the witness testimony from the alleged victims did not legally establish that [he] engaged in a course of conduct of sexual abuse, nor that the alleged touching was sexual in nature such that it would meet the definition of

> Criminal Law Section 3-315[14] or 3-602, even under a theory of Fourth Degree Sex Offense.

We disagree.

In Y.'s case, number C-16-CR-23-001318, defense counsel sought judgment of acquittal with respect to charges of sexual abuse of a minor, in a continuing course of conduct. Those charges were based on Y.'s allegations of sexual abuse that occurred from the time she was five until she was eight years old. At the close of the State's case, defense counsel argued that with respect to counts one and three,

> [T]there was no specific evidence that came out that was three or more acts in violation of 3-303, 3-304, 3-307 or violations of 3-305 or 3-306 of the Criminal Law Article as it existed prior to October 1st of 2017.

He made the same argument with respect to count five and stated "that there was no specific testimony regarding specific acts which would amount to three or more acts in violations of the statutes previously mentioned over the course of more than 90 days." The court denied the motion for judgment of acquittal.

At the close of the evidence, defense counsel argued for judgment of acquittal on counts one through eight on the ground that Y. did not "articulate specific instances that

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[14] A continuing course of conduct against a child is addressed in CR §3-315, which provides, in part:

> (a) A person may not engage in a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303, § 3-304, or § 3-307 of this subtitle, or violations of § 3-305 or § 3-306 of this subtitle as the sections existed before October 1, 2017, over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct.

would amount to three or more violations of" CR §§ 3-303, 3-304, or 3-307. The court denied the motion for judgment of acquittal, stating:

> All right for the counts of Counts 1, 3, 5 and 7 all include sex abuse of a minor, continuing course of conduct, where during the course of conduct over a period of 90 days or more, three or more acts in violation of 3-303, 3-304, 3-307 or 3-305, 3-306 as it existed before October 1st, 2016. And there was testimony that [Y.] testified that the Defendant touched her in her private areas with his hands.
>
> He did this more than once, started at five until eight or nine years old at more than once each age. It would happen at his house and no one else was there. In her forensic interview, she also testified -- or in the interview she told Ms. Kassembe that he would kiss her and tickler [sic] her. And I put quotes around tickle because that was the vocabulary of the child. And that he touched her private parts, tickling. That he touched her without her clothes.
>
> This happened many times. She said sometimes it would be face to face, sometimes from behind. She thought it was normal. And again, said a couple of times in the video that he touched her many times. And so I do believe that there is sufficient evidence that a reasonable juror could find beyond a reasonable doubt that the Defendant committed these crimes.

Our review of the record shows that the evidence was sufficient to establish three or more violations in support of a continuing course of conduct. Y. testified that Mr. Jaime touched her private areas with his hands more than once from the time she was five until she was eight or nine years old and that this happened more than once at each age. The touching occurred on weekends when Y. visited the home shared by Mr. Jaime and Q. It occurred in the mornings in the bed shared by Mr. Jaime and Q., where Y. also slept. In the forensic interview conducted by Ms. Kassembe, Y. said that Mr. Jaime "would like touch me and like call it tickling and stuff like that" "every time [she] went there[,]" which was "[m]ostly on the weekends." When asked how often Mr. Jaime touched her in the way she described, Y. responded "[e]very morning." When asked if

the touching happened one time or more than one time, Y. said, "Repeatedly." Y. said that Mr. Jaime "would like touch my private parts and like it was like tickling[.]" Y. told Ms. Kassembe that Mr. Jaime would sometime lie on her and would touch her vagina with his hands "multiple times." According to Y., Mr. Jaime "would just like always go under the underwear and just touch me. And like he would always just touch it and touch it." Y. testified that the touching occurred every year from the time she was five until she was seven, and that it happened "[e]very time I went there, like on the weekends."

From this evidence, a rational jury could find three or more violations in support of a continuing course of conduct.

F. Offenses Prior to 2017

Mr. Jaime made the following argument in a footnote:

> We do reiterate the court erred based on the preserved argument of counsel below and argue on appeal that the evidence was insufficient to establish Counts 3 and 5, as they relate to offenses prior to 2017, should have been dismissed since the repeal of the Statute governing sexual abuse on October 1, 2017. (T11, Trans 36: Lines 12-24).[15] Allowing these flawed indictments to go to the jury created a fatal variance and error that was structural. For this additional reason the court should grant a new trial.

We disagree and explain.

1. Procedural Background

From the argument presented, we perceive Mr. Jaime's contention to relate to Y.'s case, number C-16-CR-23-001318, in which Mr. Jaime was charged in count one as follows:

[15] Neither party identified any source in the record as "T11."

> THE GRAND JURORS OF THE STATE OF MARYLAND FOR THE BODY OF PRINCE GEORGE'S COUNTY ON THEIR OATH DO PRESENT THAT NELSON AMILCAR JAME AKA NELSON AMILAR JAIME ON OR ABOUT THE 8TH DAY OF OCTOBER, 2016 THROUGH THE 7TH DAY OF OCTOBER, 2017, IN PRINCE GEORGE'S COUNTY, MARYLAND DID ENGAGE IN A CONTINUING COURSE OF CONDUCT OVER A PERIOD OF 90 DAYS OR MORE WITH A VICTIM UNDER THE AGE OF 14 YEARS, TO WIT: [Y.], WHICH INCLUDES THREE OR MORE ACTS IN VIOLATION OF SECTION 3-303, 3-304, 3-307, OR VIOLATIONS OF 3-305 OR 3-306 OF THE CRIMINAL LAW ARTICLE, AS IT EXISTED BEFORE OCTOBER 1, 2017, IN VIOLATION OF CR 3-315 OF THE ANNOTATED CODE OF MARYLAND, AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE. (**SEX ABUSE MINOR-CONTINUING COURSE OF CONDUCT/ CJIS Code 2 1136**).[16]

In counts three and five, Mr. Jaime was charged with the same crime but on different dates: October 8, 2017 through October 7, 2018 in count three, and October 8, 2018 through October 7, 2019, in count five. As Y. was born on October 8, 2011, the three counts aligned with the years she was five, six, and seven years old.

In support of the motion for judgment of acquittal at the close of the State's case, defense counsel argued that, regarding Counts 1 and 3, "there was no specific evidence that came out that was three or more acts in violation of 3-303, 3-304, 3-307 or violations of 3-305 or 3-306 of the Criminal Law Article as it existed prior to October 1st of 2017." He further argued:

> And I would incorporate the argument as it relates to Count 1 and Count 3 into Count 5, that there was no specific testimony regarding specific acts which would amount to three or more acts in violations of the statutes

[16] CR §3-303 prohibits rape in the first degree, CR § 3-304 prohibits rape in the second degree, and CR § 3-307 prohibits sexual offense in the third degree. Both CR § 3-305 and CR §3-306 were repealed effective October 1, 2017. They prohibited sexual offense in the first degree and sexual offense in the second degree, respectively. CR § 3-315, as we have already noted, prohibits a continuing course of conduct.

> previously mentioned over the course of more than 90 days. And otherwise, I would submit on the testimony as it relates to that specific case.

As we already noted *supra*, in our discussion of Mr. Jaime's course of conduct argument, the court found that there was evidence that the abuse happened multiple times and denied the motion for judgment of acquittal. Immediately thereafter, defense counsel made an additional argument in support of the motion for judgment of acquittal, stating:

> And just reviewing the indictments, as it relates to Count 3 and Count 5, it charges an offense on the 8th day of October of 2016 through the 7th day of October of 2018 in Count 3. But it charges a crime as it existed before October 1st of 2017. So I don't think Count 3 and Count 5 actually state a crime. And, therefore, Motion for Judgment of Acquittal should be granted as it relates to both of those counts.

In response, the State attempted to clarify the charges, stating:

> So that's not actually how it reads, Your Honor. So with respect, what it reads is "Which includes three or more acts in violations of section 3-303, 3-304, 3-307." Because as of that date those are the non-repealed acts. "Or violations of 3-305, 3-306 as they existed before October 1st of 2017." Because in October 1st of 2017, they were repealed. It does not forbid us from going forward on those acts if something had happened before October 1st of 2017.
>
> However, we're not alleging any dates before October 1st of 2017, which is why **we are going under 3-303, 3-304, or 3-307. Nobody's alleging anything under 3-305 or 3-306**.

(Emphasis added).

Based on the State's clarification that it was not alleging anything under CR § 3-305 or CR § 3-306, the court denied the motion for judgment of acquittal.

At the close of all the evidence, after the defense had presented its case, defense counsel again argued for judgment of acquittal in Y.'s case. Specifically, the defense sought judgment of acquittal with respect to counts one through eight on the ground that

Y. did not "articulate specific instances that would amount to three or more violations of" CR §§ 3-303, 3-304, or 3-307. Again, as we noted *supra*, the court denied the motion on that ground, finding that there was evidence that Mr. Jaime touched Y. many times from the time she was five until she was eight or nine years old and that he touched her more than once at each age. Counsel did not make any additional argument in support of the motion for judgment of acquittal and never mentioned anything about allegations under the repealed statutes, CR § 3-305 or CR § 3-306.

2. <u>Analysis</u>

Our review of the record as a whole shows that Mr. Jaime failed to preserve for our consideration his challenge to the sufficiency of the evidence with regard to counts three and five on the ground that they related "to offenses prior to 2017" and the "Statute governing sexual abuse" had been repealed on October 1, 2017. Both Md. Rule 4-324(c) and CP § 6-104 provide that if a motion for judgment of acquittal at the close of the State's case is denied, a defendant may offer evidence, but in doing so, the motion is deemed withdrawn. Md. Rule 4-324(c) and CP § 6-104(a). The defendant may move for judgment of acquittal at the close of all the evidence. Defense counsel did that here, but did not argue in his motion for judgment of acquittal at the close of all the evidence, any issue pertaining to the repeal of the statutes effective October 1, 2017. Nor did he renew his prior argument or incorporate the reasons raised in the initial motion for judgment of acquittal.

Even if that issue had been argued in support of the motion for judgment of acquittal at the close of all the evidence, Mr. Jaime's contention would fail. Although the

State asserted incorrectly that it was "not alleging any dates before October 1st of 2017," as evidenced by the charges alleging a continuing course of conduct from the October 8, 2016 through October 7, 2017, the State clarified that it was proceeding under CR §§ 3-303, -304, or -307, and it was not "alleging anything under 3-305 or 3-306." It appears that defense counsel acknowledged that fact when, in support of his argument for judgment of acquittal at the close of all the evidence as to counts one through eight, he claimed only that the State had failed to "articulate specific instances that would amount to three or more violations of" "either [CR §§] 3-303, 3-304, or 3-307." Defense counsel made no reference to either CR § 3-305 or CR § 3-306, the statutes that had been repealed effective October 1, 2017. Mr. Jaime has not directed our attention to anything in the record, and our review has not found anything to suggest that, contrary to its representation before the trial court, the State did, in fact, proceed under either CR § 3-305 or CR § 3-306.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.