

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1276

September Term, 2016

KEVIN EDWARD SNIDER

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Berger,

JJ.

Opinion by Graeff, J.

Filed: May 8, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Baltimore County convicted Kevin Edward Snider, appellant, of three counts of sexual abuse of a minor, one count of second degree rape, one count of second degree sexual assault, two counts of second degree sexual offense, two counts of third degree sexual offense, three counts of fourth degree sexual offense, and two counts of second degree assault. The court sentenced appellant to incarceration for a total of 80 years.

On appeal, appellant presents the following questions for our review:

1. Did the circuit court err in refusing to permit the defense to introduce evidence that the victim had accused two other individuals of rape?
2. Was the evidence insufficient to sustain the convictions?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

C.M., who was born in 1997, testified that appellant began sexually abusing her when she was four years old. Appellant married her mother when C.M. was approximately three years old.

The abuse first occurred during the day when C.M.’s mother, Ms. G., was at work and the other children were at school.¹ While C.M. and appellant were watching television in the living room, appellant touched her, first on the outside and then inside her vagina. Appellant pulled down his pants and C.M. saw his penis. He played with his penis while touching her. When appellant stopped, he and C.M. “just continued to watch TV.”

¹ C.M. has two brothers, and appellant has three children, two of whom moved in with Ms. G. and appellant after they were married.

Approximately one or two weeks after the first incident, appellant entered C.M.'s bedroom while she was still awake. No one else was in her room when appellant entered. Appellant sat on the bed and began touching C.M. He got under the blankets and put his fingers in her underwear and started touching her vagina. He also put his hand on his penis. This went on for "not too long" and then appellant left the bedroom.

C.M. remembered those events because "it hurt" and "something . . . just didn't feel right." C.M. did not tell anyone because she "didn't know that it was wrong." Thereafter, similar incidents happened "[a]t least weekly" when no one else was home with C.M. and appellant.

C.M. testified that she missed a lot of school because she was sick or not feeling well, but there also were times when she would claim that she was not feeling well and did not go to school because appellant told her to stay home. Ms. G. acknowledged that C.M. came home early from school a lot, and doctors could not find anything wrong with her.

When C.M. was approximately seven or eight years old, appellant picked her up early from school, and they went home. While they were watching television, appellant told C.M. to put his penis in her mouth, and when she did, he pushed her head toward it. C.M. testified that appellant's penis was "hard" and that "white stuff" came out of it. Afterward, appellant told C.M. not to tell anyone what had happened, and they went back to watching television. C.M. never told anyone what happened because she "just didn't know it was wrong." She testified: "I mean, I felt like it was wrong but I felt like that is how I was raised, like it was normal. I used to visit my [biological] Dad [in Florida] and

think he didn't love me because he didn't do those things to me." C.M. testified that appellant asked her to put her mouth on his penis "a lot." That stopped for a time when C.M. shared a bedroom with appellant's daughters, but then it started again. Appellant also slapped C.M. "[c]lose to every day."

In December 2007, Ms. G., appellant, C.M., and her two brothers moved to a house on Walford Drive in Dundalk. None of appellant's daughters lived in that home. When C.M. was eleven years old, appellant pulled her out of school early, and they went home and watched television in the basement. Appellant put his fingers down C.M.'s pants and touched her vagina. He pulled off his pants and C.M.'s pants. He then held C.M. down, covered her mouth, and put his penis into her vagina. That "went on for like 15, 20 minutes." Appellant told C.M. not to tell anyone what had happened. Thereafter, appellant would touch C.M. and put his penis in her vagina "[a]t least once a week."

When C.M. was thirteen or fourteen years old, she and her brother were pulled out of school to be homeschooled. Ms. G. testified that C.M. was homeschooled because she was missing a lot of school and not doing well.

Sometime thereafter, on one occasion, appellant, who was at home, started screaming at C.M. and her brother. The children went into C.M.'s bedroom and locked the door, but appellant "broke in the door" and started punching C.M. in the sides. C.M. testified that, when she told her mother what happened, Ms. G. made plans to move out. Shortly thereafter, Ms. G. and appellant obtained a divorce. C.M. testified that she did not

tell her mother about the sexual because she thought her mother would have killed appellant, stating: “I didn’t want to lose my Mom. She is all I got.”

After the divorce, C.M. returned to high school. She usually walked home with her friend, Monica T. At some point, appellant began showing up “around every corner” and following in his vehicle as C.M. walked home. When C.M. would see appellant’s vehicle, she would get scared, grab Monica’s hand, and run home. C.M. would watch appellant “speed past” her house, and then she would not see him again until the following day. C.M. did not tell her mother that appellant was following her because she was scared that her mother “would go to his house or something, hurt him and [she] didn’t want [her mother] to get in trouble.” Monica T. testified that, after appellant followed C.M. a couple of times, they said something about it to Ms. G.

Monica T. was the first person C.M. told about what appellant had done to her. C.M. told Monica T. that appellant touched and abused her in sexual ways, that he physically hit her, and that these things always happened in her home. C.M. asked Monica T. not to tell anyone because she was “petrified.”

Ms. G. testified that, in the Spring of 2011, C.M. was crying a lot, cutting herself, acting “combative,” screaming a lot, and “pounding her fists,” but she refused to see a doctor and did not want to talk to a therapist. In the middle of ninth grade, C.M. dropped out of high school and went to live with her biological father in Florida. C.M. testified that she moved to Florida because appellant had been following her. She stayed in Florida for

approximately two years. She did not complete ninth grade because she “was really having a hard time emotionally and ... just felt like [she] couldn’t handle it.”

When she was 16 years old, C.M. moved back to Maryland and lived with her mother, her mother’s new husband, and her brother. She got a job at a local McDonald’s restaurant. On one occasion, C.M. went outside to deliver a drive-thru order to a customer and saw that the customer was appellant. She “threw his food at him and ran back” into the restaurant. She was “freaking out and crying.”

C.M.’s manager, Sherry Majka, testified that she tried to calm C.M. down. C.M. told Majka that the customer to whom she had delivered the order was someone who had committed “some form of abuse” against her.

Appellant returned to the McDonald’s on three occasions. C.M. did not want to see appellant or “be associated with that part” of her life, so she quit her job. C.M. told her mother that she quit her job because appellant was coming to the McDonald’s.

While C.M. was still employed by McDonald’s, she began experiencing pain in her legs and hips. One day, she woke up unable to sit up or walk. She was hospitalized, diagnosed with psychosomatic pain, and referred to a therapist. C.M. told her therapist what appellant had done to her, and the therapist reported the abuse. C.M. testified that she took medication for post-traumatic stress disorder, anxiety, and depression “because of what [appellant] did to [her].”

C.M. was interviewed by social services and spoke with the police. She did not think her abuse would be reported to the police or that appellant would be charged because

the events had happened long ago. C.M. acknowledged telling an interviewer at the Child Advocacy Center that, at one point, appellant was having sex with her three to four times per week, that he did not use a condom, and that he ejaculated inside her. She also told the interviewer that, when she was twelve years old, she stopped getting her period and thought she was pregnant. Appellant got mad at her, hit her, and punched her in the stomach. She bled for two months and did not think she was pregnant thereafter.

One of appellant's daughters, J.S., who is about six years older than C.M., testified for the defense. She lived with appellant from the time she was seven until she was sixteen years old. When she was living in the house, C.M. shared a bedroom with her and her sister, and every other weekend, appellant's other daughter would also stay in the girls' bedroom. J.S. testified that C.M. rarely left school early because she was sick, and when she did, Ms. G. took off work to pick her up. Appellant "never" picked up C.M. from school, and never stayed at home with her when she was ill, because his work schedule was not as flexible as Ms. G.'s, who worked from 9 a.m. to 5 p.m.

DISCUSSION

I.

Appellant contends that the trial court erred in refusing to permit him to introduce evidence that C.M. had accused two other individuals of rape. The State disagrees.

The State first brought up the issue through a motion in limine to preclude this evidence. It argued that evidence regarding the other allegations was inadmissible, although it acknowledged that a statement C.M. made to the police regarding appellant in

the course of the investigation of the claims was admissible. Accordingly, during the State's examination of C.M., the prosecutor asked C.M. if she was contacted by detectives about an investigation unrelated to appellant, and he inquired whether they asked her at that time if appellant did anything to her. C.M. testified that this occurred, and she told the officers no, explaining that she did not want her mother to get locked up, and she "just didn't want to deal with that to remember everything, talk about it."

Appellant argues that the court's refusal to allow him to cross-examine C.M. regarding the other allegations of rape impermissibly limited his opportunity for meaningful cross-examination, undermined his right to present a complete defense, and denied him a fair trial. He asserts that C.M.'s allegations against two other people were relevant for two reasons. First, he argues that the allegations were relevant to show her willingness to report those crimes, and therefore, that her initial statement to police that appellant did not abuse her was true, and she was lying in her accusations at trial. Second, he asserts that the fact that C.M. accused two other people of rape "tended to prove that she had a tendency to make such allegations," and because those allegations did not result in criminal charges, it suggests those allegations were false, and therefore, the allegations in this case also were false. He asserts that, because the critical issue was C.M.'s credibility, the probative value of the evidence was "considerable," and it outweighed any potential prejudice because defense counsel's proposed questioning was not designed to embarrass or harass her.

The State contends that these arguments were not made below, and therefore, they are waived. In any event, it asserts that the court acted within its discretion in precluding cross-examination of C.M. about the prior reports of sexual assaults by persons other than appellant.

We begin with the State's preservation argument. Ordinarily, we will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court." Maryland Rule 8-131(a). Issues that are not preserved are deemed to be waived. *Brice v. State*, 225 Md. App. 666, 678 (2015), *cert. denied*, 447 Md. 298 (2016). The purpose behind the preservation and waiver principles is well established:

The purpose of Md. Rule 8-131(a) is to ensure fairness for all parties in a case and to promote the orderly administration of law. Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings. For these reasons, Md. Rule 8-131(a) requires an appellant who desires to contest a court's ruling or other error on appeal to have made a timely objection at trial. The failure to do so bars the appellant from obtaining review of the claimed error, as a matter of right.

Robinson v. State, 410 Md. 91, 103 (2009) (citations and quotations omitted).

Here, defense counsel argued to the circuit court that evidence of C.M.'s prior allegations of rape should be admitted to place in context her statement to a detective that appellant did not sexually abuse her, to challenge her credibility, and generally to show what was going on in her life at the time she spoke to the detectives. Prior to trial, when the State moved in limine to preclude the defense from introducing any evidence about the

two rape allegations, it argued that such evidence was impermissible under Maryland's Rape Shield Statute.²

The State proposed that C.M.'s statement to the police, that appellant did not do anything to her, be sanitized by limiting the context in which the statements were made to an unrelated investigation, for which C.M. was not in trouble and did not involve appellant. The State argued that allowing details of the other rape allegations would be highly prejudicial, would confuse the jury, and would open up "all types of questions and issues" about the nature and status of the other cases. The State maintained that the evidence should not be used to challenge C.M.'s credibility because, although no charges were brought as a result of the allegations, there was nothing to suggest that she had recanted those other allegations or that they were unsubstantiated, the evidence was not relevant, and the prejudice outweighed the probative value.³

Defense counsel argued that the rape shield statute was not implicated, but the evidence of the other accusations related to C.M.'s credibility:

So on some levels it only – it goes to her credibility. Were you being credible then? Are you being credible now? And in the context of what she was saying, if she was able to admit to Detective Tomas that she was raped twice, then the excuse or the argument of credibility that she didn't want to deal with it, she is unwilling to say anything about it, she is unwilling to talk

² Maryland's Rape Shield Statute provides that, in specified sexual abuse prosecutions, subject to certain exceptions, "evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted." Md. Code (2012 Repl. Vol.), § 3-319 of the Criminal Law Article ("CR").

³ The prosecutor proffered that there were "many reasons" that no one was charged, including "basically insufficient evidence, out-of-state victim."

about it, which is what she says to the detectives, goes to both consistency and credibility as to where she stands on the issue. Is she really doing this because it is the truth? Or was she really afraid? Because if she wasn't afraid when she was in Florida to say that she had been raped twice before and that her stepfather didn't do this, why is it now that she can say he did do it when she had said no before and she had been able to talk about two other anonymous sexual misconducts against her without fear or trepidation?

Defense counsel argued that, if the evidence did fall under the rape shield statute, the evidence of the other rape allegations should be admitted under the ulterior motive exception set forth in CR § 3-319(b)(4)(iii). The judge interpreted defense counsel's argument to be that the allegations were "false, it didn't happen, which is not talking about specific sexual conduct – like he is not using it to argue this is an unchaste woman, she has a bad reputation, she sleeps around. He is saying she is dishonest, these allegations weren't even true."

The court ultimately determined that the rape shield statute did not apply, but it granted the motion in limine on the ground that the prejudicial effect of the evidence of the two rape allegations outweighed any probative value that the evidence might have. It also agreed to re-visit the issue as the testimony unfolded at trial.

During direct examination, the prosecutor asked C.M. if she had been contacted by Baltimore County detectives regarding an investigation that did not involve appellant. C.M. responded in the affirmative. The following then occurred:

Q.: And during the time that you spoke with that detective from Baltimore County, did he ever ask you if [appellant] did something to you?

A.: Yes.

Q.: And did you answer him?

A.: Yes.

Q.: And what did you tell the detective when he asked you that?

A.: I told him no.

Q.: And why did you tell the detective no at that time when he asked you?

A.: Because I knew that my Mom would probably get herself locked up and I didn't want that to happen. I just didn't want to deal with that to remember everything, talk about it.

Prior to cross-examining C.M., defense counsel renewed his request to allow the jury to hear that C.M. had alleged that she had been raped on two separate occasions by two different individuals. Defense counsel argued that the trauma C.M. discussed during direct examination focused only on appellant, but she had told the detective that she had been raped by two other individuals. The defense asserted that the other rapes also would have been traumatic, and the jury should at least know that C.M. had reported them to the detective. Again, defense counsel argued that no detail was required, but just enough information “to put the no into context” so the jury knew that appellant was “not the only person that put her into a traumatic state.”

The court initially noted that counsel was making a different objection, i.e. previously he argued that the prior alleged rapes “didn't happen at all,” and now he was arguing that the jury needed to understand that the upset that the victim displayed “might be from other things.” Defense counsel stated that the jury needed to put the victim's testimony in context and “have a bookend to it.” He stated that the prosecutor could then ask on redirect what happened in those cases.

The court explained that it had given the issue much thought. It stated, however, that it:

[kept] coming back to the same place where I just am convinced . . . any value [the evidence] might have that would help this jury is miniscule compared to the prejudicial effect and the risk of confusion and getting into completely collateral matters. As you said yourself, [the prosecutor] could then talk about all this other stuff. No, that is not what this case is about. So we are not going to go down that road. I appreciate your argument and your record is preserved.

The Court ruled that the State's motion in limine to exclude the information "remains granted." After the court denied appellant's motion for judgment of acquittal, defense counsel again raised the issue, stating:

I would also renew my motion, my objection to not being allowed to introduce in evidence the two accusations of rape that the witness made prior to her testimony today. Though I do not believe that they fall within the rape shield statute, I do believe that their probative value is outweighed by prejudice because they go to the heart of credibility and to the time line and also to the witness's own characterization of what was going on in her life at the time, that not only involved my client but involved two other potential strangers. And I would renew my objection to that for the record.

Based on our review of the record, we conclude that appellant raised below the issue he raises on appeal, i.e., that the evidence was relevant to C.M.'s credibility and whether the allegations against him were false. The issue is preserved for the Court's review. Thus, we turn to the merits of the argument.

Pursuant to Maryland Rule 5-403, a trial court may exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of . . . waste of time." A court's

weighing of the probative value versus its prejudicial effect is reviewed for an abuse of discretion. *Espina v. Prince George's County*, 215 Md. App. 611, 652-53 (2013).

Here, the trial court precluded defense counsel from eliciting evidence of C.M.'s allegations of rape against two other individuals because any value that it "might have...[was] miniscule compared to the prejudicial effect and the risk of confusion and getting into completely collateral matters." The record supports this ruling.

Initially, that C.M. accused others of rape does not, by itself, have any relevance to her credibility. *See Rau v. State*, 133 Md. 613, 615-16 (1919). Given that there was no evidence that C.M. recanted the allegations or that the accusations were false, *see State v. Cox*, 298 Md. 173, 183 (1983) (cross examination that witness lied under oath relevant to credibility), the circuit court properly found that the probative value, if any, of the evidence was "miniscule."

Moreover, the record supports a finding that the evidence could distract and confuse the jurors. Defense counsel acknowledged the potential for a mini-trial regarding the other incidents, suggesting that, after he inquired about the allegations, the prosecutor could "on redirect ask [C.M.] what happened to those cases," and C.M. could explain.

Under the circumstances of this case, the circuit court did not abuse its discretion in determining that any probative value of the evidence was outweighed by unfair prejudice or confusion of the issues. There was no error or abuse of discretion in determining that the evidence was inadmissible.

II.

Appellant next contends that the evidence was insufficient to support his convictions. In support, he asserts that there was no proof against him except for C.M., whose testimony “was too incredible to establish guilt beyond a reasonable doubt.”

The State contends that the argument on appeal, that C.M.’s “credibility was so poor that she could not be believed by any trier of fact,” was not raised below, and therefore, it is not preserved for the court’s review. We agree.

Maryland Rule 4-324 provides that a defendant is required to “state with particularity all reasons why” the motion for judgment of acquittal should be granted. “The issue of sufficiency of the evidence is not preserved when [the defendant’s] motion for judgment of acquittal is on a ground different than that set forth on appeal.” *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Anthony v. State*, 117 Md. App. 119, 126 (1997)).

Here, at the close of the State’s case, defense counsel moved for judgment of acquittal on the ground that “the only evidence ... of any misconduct comes from the witness herself,” and there was no evidence “of any physical problems or damage to [C.M.]” At the close of all the evidence, defense counsel renewed his motion for judgment of acquittal, arguing that “we have had only the testimony of [C.M.] as to the allegations that are held against my client,” and “[t]here has been no other proof of it, no scientific proof, no witnesses to it and only really one person coming forth and saying that she told them about the abuse.” Defense counsel argued that the evidence was “just not enough to get over the burden of reasonable doubt.” Because appellant did not argue below, as he

does on appeal, that C.M.'s testimony was too incredible to prove his guilt beyond a reasonable doubt, the issue is not preserved for review.

Even if preserved, the contention that the evidence was insufficient to sustain his conviction is without merit. In determining whether evidence is legally sufficient, 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.” *Fuentes v. State*, 454 Md. 296, 307 (2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We view the State’s evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State. *State v. Rendelman*, 404 Md. 500, 513-14 (2008). “We defer to the fact finder’s opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.” *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal citations and quotations omitted). It is not our role “to re-weigh the evidence and to reevaluate the credibility of witnesses.” *State v. Manion*, 442 Md. 419, 445 (2015). Moreover, it is well established that “the testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction.” *Marlin v. State*, 192 Md. App. 134, 153 (2010) (citing *Walters v. State*, 242 Md. 235, 237-38 (1966)).

Here, C.M. testified to appellant’s repeated sexual assaults on her. Although there were some inconsistencies in details between her testimony and that of other witnesses, it was up to the jury to assess the credibility of C.M. and the other witnesses, to weigh the evidence, and to resolve the conflicts. C.M.’s testimony alone was sufficient to support

appellant's convictions.⁴ See *Branch v. State*, 305 Md. 177, 183 (1986) (“The testimony of a victim, unlike that of an accomplice, needs no corroboration.”) (quoting *Walters v. State*, 242 Md. 235, 238 (1966)). *Accord Scriber v. State*, ___ Md. ___, No. 2699, Sept. Term, 2016, slip op. at 19-20 (filed Mar. 29, 2018).

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

⁴ To be sure, in *Kucharczyk v. State*, 235 Md. 334 (1964), cited by appellant, the Court of Appeals held that the testimony of the victim, a boy with an I.Q. of 56 who gave internally inconsistent testimony whether the sexual assault occurred, was so contradictory that it was insufficient to support a finding of guilt beyond a reasonable doubt. That case, however, has been narrowly interpreted and “does not remotely stand for the proposition . . . that marginal or even impeachable testimony is entitled to no weight.” *Turner v. State*, 192 Md. App. 75, 81 (2012) (quoting *Vogel v. State*, 76 Md. App. 56, 59 (1988)). Unlike in *Kucharczyk*, C.M. did not give contradictory testimony regarding whether crimes occurred, she was clear that appellant sexually assaulted her on numerous occasions.