Circuit Court for Baltimore City
Circuit Court No. 116264013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1600

September Term, 2017

WILFREDO CHEVERRIA-ABREGO

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 4, 2018

This appeal arises out of appellant Wilfredo Cheverria-Abrego's ("Cheverria-Abrego" or "appellant") convictions for sexual abuse of a minor, rape in the second degree, and sexual offense in the third degree. Following a bench trial before the Circuit Court for Baltimore City, the circuit court sentenced Cheverria-Abrego to twenty-five years' incarceration for the offense of sexual abuse of a minor and to a consecutive twenty-years' incarceration for the offense of rape in the second degree. Cheverria-Abrego timely appealed and asks that we review two issues, which we have reworded as follows:

1. Whether Cheverria-Abrego knowingly and intelligently waived his right to testify after the trial court provided an explanation of the admissibility of his prior convictions for the purposes of impeachment.

2. Whether Cheverria-Abrego was convicted and sentenced illegally for a crime that was not charged in the indictment.

For the reasons explained below, we affirm the decision of the circuit court.

BACKGROUND & PROCEDURAL HISTORY

The State alleged at the bench trial that, on October 2, 2015, Cheverria-Abrego, who was approximately twenty-six years old at the time, had sexual intercourse with "S," a thirteen-year-old female child. Based on testimony from S and S's mother, "M," as well as the detective assigned to the case, the State established the following facts.

M moved to Maryland in April 2015, and her three children -- one son, age eighteen; and three daughters, including S, who were ages six, eight, and thirteen -- soon followed in June of 2015. That same month, M moved into a four-bedroom house with her boyfriend, her four children, her mother, and Cheverria-Abrego, who she had met through

her boyfriend. On one floor of the home, M's son and her mother shared a bedroom, M's three daughters shared a bedroom, and Cheverria-Abrego had his own bedroom. M and her boyfriend shared a bedroom in the basement.

M testified that she was not concerned about her daughters' bedroom being on the same floor as Cheverria-Abrego because "he wasn't spending much time there" and "was always working outside." Further, she did not believe that appellant and S were spending time alone, and her mother and adult son were on the same floor and neither were employed outside of the home. S testified, however, that "when [she] was 13 years old [she] felt [that she and Cheverria-Abrego were] boyfriend and girlfriend." Although S stated that she and Cheverria-Abrego had not spent much time alone together, she indicated that Cheverria-Abrego "hung out" with her family and that she and Cheverria-Abrego kept their relationship a secret from her mother.

S testified that, around midnight on October 2, 2015, Cheverria-Abrego went into her bedroom, which she shared with her two younger sisters, and asked her to come to his room to talk. S complied and, once in Cheverria-Abrego's room, they undressed, kissed, and engaged in sexual intercourse. Thereafter, S went back to her bedroom. S stated that this incident was the only time the two had sexual intercourse. Soon after, however, S became nauseated and M gave her a pregnancy test, which was positive. The following month, S terminated the pregnancy. The parties stipulated that the DNA of the aborted fetus matched that of Cheverria-Abrego.

Cheverria-Abrego was charged with sexual abuse of a minor, rape in the second degree, and sexual offense in the third degree. Cheverria-Abrego pled not guilty to all three counts. A bench trial was held before the circuit court, and at the conclusion of the trial on April 3, 2017, the circuit court found that, based on the testimony of S, M, and the detective, as well as evidence demonstrating that Cheverria-Abrego's DNA matched that of the aborted fetus, Cheverria-Abrego was guilty of each of the three counts. The court sentenced Cheverria-Abrego at a hearing on August 8, 2017.

DISCUSSION

Cheverria-Abrego's raises two issues on appeal. The first relates to whether the trial court committed error in its explanation to Cheverria-Abrego of the potential use of his prior convictions, if any, to impeach his testimony. In his view, because of the trial court's erroneous explanation, he was denied his right to make a knowing and intelligent decision with respect to his exercise of his right to testify on his own behalf. Because our inquiry involves an analysis of the accuracy of the trial court's explanation of an evidentiary matter, the issue presents a legal question, which we review *de novo*. *See Parker v. State*, 408 Md. 428, 437 (2009) (Citations omitted) ("When the trial judge's ruling involves a legal question . . . we review the trial court's ruling *de novo*.").

The second issue is based on Cheverria-Abrego's assertion that he was convicted of an offense not included in the charging document. His primary contention is that the language used in the charging document regarding the count of child sexual abuse required the State to prove that he had care or custody, or was responsible for the supervision, of

the minor child involved, under a paragraph of the statute. *See* Md. Code (2002, 2012 Repl. Vol.), Crim. Law Art. ("CL"), § 3-602(b)(1). Thus, he seeks our review of whether the evidence was sufficient to establish this portion of the child sex abuse statute. Although we disagree with Cheverria-Abrego regarding the portion the State had to prove under the statute, we review the sufficiency of the evidence by examining "whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt' . . . ." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 315 (1979)). We review such evidence "in the light most favorable to the State." *Id.*

I. The Circuit Court Did Not Commit Reversible Error When It Advised Cheverria-Abrego of the Implications of Testifying on His Own Behalf.

Appellant's first argument on appeal is that his "election to forfeit his right to testify was based on facially incorrect information" and, therefore, "his waiver of the right to testify was not made knowingly and intelligently." At the close of the State's case during Appellant's bench trial, the following exchange occurred:

> [DEFENSE COUNSEL]: Have you given thoughtful consideration as to whether you would like to testify and have the Judge hear what you'd like to say with regard to what's taken place in this case?
>
> MR. CHEVERRIA-ABREGO[1]: No.
>
> [DEFENSE COUNSEL]: No, you haven't considered it, or no, you don't want to testify?

[1] Cheverria-Abrego noted in his brief that his name was misspelled throughout the trial transcripts, and we have therefore corrected that misspelling within this opinion without the use of brackets.

MR. CHEVERRIA-ABREGO: **I don't want to speak**.

THE COURT: Before the Court considers that apparent election to invoke Fifth Amendment constitutionally protected right to remain silent, [Defense Counsel], if you would please further explain to Mr. Cheverria-Abrego the greater particulars of if he were to elect to testify what he would subject himself to by way of cross examination by the State, perhaps even by the Court and [an] examination in connection with impeachable offenses, if any?

[DEFENSE COUNSEL]: Mr. Cheverria-Abrego, if you elected to testify, you would be subject to cross-examination by the State and the Court. The Court could ask you questions, the State would likely cross examine you and your testimony could open you up to potentially being charged for other things. They would -- and if you've testified in another matter and your testimony here was not consistent with prior testimony you could -- you would be providing impeachment testimony here that they could potentially use against you. Do you understand that?

MR. CHEVERRIA-ABREGO: Yes.

THE COURT: So, Mr. Cheverria-Abrego, what the Court is implying or, for lack of a better term, trying to get at is this[:] If you elected to testify you would be subject to cross-examination by the State meaning the State . . . would ask you questions. Okay? You understand that?

MR. CHEVERRIA-ABREGO: Yes.

THE COURT: Within the course of that questioning by the State, **the State could ask you whether, since the time you attained the age of 18 or during the last 15 years you were convicted of any offenses after having been represented by counsel or having waived your right to counsel [--] those offenses and any convictions thereon being notorious offenses, meaning serious offenses, felony offenses, and any offenses which go to what are called crimes of moral turpitude.** Crimes of moral turpitude

> contemplate offenses where some element of the offense is an element of deceit. And the reason the State would be able to ask you those questions, sir, is in bringing out that information the State would be seeking to call into question your credibility, meaning the believability of any testimony you may have decided to offer if you did want to testify here today. Do you understand that?
>
> MR. CHEVERRIA-ABREGO: Yes, I understand.
>
> THE COURT: Okay. So understanding that, is it your election, your wish, to not testify today?
>
> MR. CHEVERRIA-ABREGO: **No. I'm going to remain silent**.

(Emphasis added).

Based on this exchange, appellant's primary contention is that "[t]he trial court's advisement to appellant [--] that if he testified the State could impeach him with 'any offenses' and 'any convictions thereon being notorious offenses, meaning serious offenses, felony offenses [and any offenses which go to what are called crimes of moral turpitude]' [--] is facially incorrect." Appellant points to the requirements of Maryland Rule 5-609 -- an apparent basis for the trial court's explanation to appellant regarding the possibility of being questioned about prior criminal convictions. Under subsection (b) of the Rule, the types of convictions that may be admitted are limited by time and the nature of the conviction itself. Cheverria-Abrego asserts that the trial court failed to accurately convey those limitations.

As a means for impeachment, a prior conviction may not be admitted "if a period of more than 15 years has elapsed since the date of the conviction." Md. Rule 5-609(b).

Further, only certain types of convictions are admissible, as indicated by the following part of the Rule:

> For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, *but only if* (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Md. Rule 5-609(a) (Emphasis added).

Pursuant to the Fifth Amendment to the United States Constitution,[2] a defendant in a criminal trial has a fundamental "right to remain silent and refuse to testify in order to avoid the possibility of compelled self-incrimination . . . ." *Morales v. State*, 325 Md. 330, 335 (1992). That right encompasses the requirement that a defendant's decision whether to testify on his or her own behalf be "knowingly and intelligently made." *See Williams v. State*, 110 Md. App. 1, 37 (1996) (quoting *Morales*, 325 Md. at 339). Regarding a trial court's role in ensuring that a defendant has been advised of his or her right to testify on his or her own behalf, we have said:

> Before an unrepresented defendant can validly waive his or her Fifth Amendment right, the "record must show that the defendant was informed of the right; ordinarily, that advice will have to come from the trial judge." *Martin v. State*, 73 Md. App. 597, 602, 535 A.2d 951 (1988). A trial judge may assume that a defendant has been properly advised if represented by

[2] See *Malloy v. Hogan*, 378 U.S. 1, 6 (1964) holding that, in addition to the right to legal representation, "the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States."

> counsel unless there is a reason to believe that the defendant is confused or misinformed. There is no concomitant obligation, on the other hand, that the trial judge advise a defendant, even if unrepresented, of the possibility of impeachment by prior criminal convictions should he or she choose to testify.

Id. at 30. We added, however, that, "if the trial judge undertakes to do so, he or she must do so correctly." *Id.* at 32.

Appellant cites to *Morales*, 325 Md. 330 as the primary support for his contention that the trial court's explanation resulted in his lack of "knowingly and intelligently" waiving his right to testify. In that case, Morales elected to represent himself, despite the trial court's repeated recommendations to him to obtain a lawyer. *See id.* at 332-33. At the close of the State's case, Morales informed the court that he intended to be his first and only witness. The trial court properly advised Morales that he was permitted to testify on his own behalf, but that the court could make no inference of guilt if he were to elect to remain silent. *See id.* at 333. Following the court's explanation of that right, Morales stated, "I will take the stand." *Id.* Given Morales's *pro se* status, however, the trial judge proceeded to explain the potential consequences of testifying during the following exchange:

> THE COURT: I will give you some time to think about this. [. . .] I don't know if, for instance, if you have ever been convicted of a crime before. [. . .] **But if you take the stand and testify and you have been convicted of a crime before, they may ask you, they meaning the State may ask you about that.** Not to prove that because you were guilty before that you are guilty now, but they may bring it up to show whether or not you should be believed or not. It goes to what they call veracity, believability.

> Does that help you decide whether you should or shouldn't?
>
> THE DEFENDANT: I don't want to go up there.
>
> THE COURT: You don't want to go up there?
>
> THE DEFENDANT: No.

Id. at 334.

As the Court of Appeals noted, although the trial court had no knowledge of Morales's prior convictions, his "record, [as] revealed at sentencing, consisted of convictions of assault and battery, possession of PCP, possession of PCP with intent to distribute, theft, disorderly conduct, and numerous motor vehicle offenses." *Id.* at 334-35. The Court of Appeals examined those offenses with respect to whether each would have been admissible and concluded that "[t]heft . . . is a crime relevant to credibility and was the only one . . . that was clearly admissible for impeachment purposes." *Id.* at 339. The Court of Appeals, therefore, held the following:

> A reasonable inference from the quoted colloquy between the judge and Morales is that Morales intended to testify until the judge advised him to "think about this" and that his convictions could be brought out to show whether he should be believed or not. *Since Morales apparently changed his decision to testify based on the trial court's incorrect implication that all of his prior convictions could be used to impeach him, the defendant's decision to waive his constitutional right to testify and to exercise his constitutional right to remain silent was not knowingly and intelligently made*. If the trial court -- although not required to do so -- had given the correct information regarding impeachment by evidence of prior convictions, the result would be different.

Id. at 339-40 (Emphasis added). Contrary to Cheverria-Abrego's argument on appeal, however, we conclude that the holding in *Morales* merely supports our conclusion that the trial court did not commit reversible error in this case.

Cheverria-Abrego's reliance on *Morales* fails for at least two reasons. First, Cheverria-Abrego argues that Rule 5-609 limits the universe of convictions that may be used to impeach a witness further than "the court led appellant to believe," but he does not indicate what limiting principle the court's explanation excluded. In *Morales*, the trial court's statements to the *pro se* defendant amounted to an "incorrect implication that *all* of [the defendant's] prior convictions could be used to impeach him." *Id.* at 339 (Emphasis added). There, the trial court inaccurately stated to Morales, "if you take the stand and testify and you have been convicted of a crime before . . . the State may ask you about that." *Id.* at 334.

Here, the trial court explained to Cheverria-Abrego, who was represented by counsel, that "the State could ask" him about criminal convictions that occurred within the last fifteen years[3] for offenses that are considered to be "notorious offenses, meaning serious offenses, felony offenses, and . . . crimes of moral turpitude." Critically, the trial court in this case defined its use of the term "notorious offenses" as "serious offenses, felony offenses," and the phrase "crimes of moral turpitude" as "offenses where some

[3] Given Cheverria-Abrego's age of twenty-eight years, the trial court properly indicated that, to be admissible, the convictions must have occurred after he reached the age of eighteen.

element of the offense is an element of deceit." Although the trial court's language varied from the language of Rule 5-609(a), it was not inconsistent with its content, which limits admissible convictions to "infamous crime[s] or other crime[s] relevant to the witness's credibility." *See* Md. Rule 5-609(a). As the Court noted in *Morales*, "infamous crimes" that may be admissible "include . . . common law felonies, and other offenses classified as *crimen falsi*.[4]" *Id.* at 338 (quoting *Horne v. State*, 321 Md. 547, 554 (1991)). The *Morales* Court added that "[p]rior convictions of lesser crimes that bear on the witness['s] credibility may also be used to impeach a witness." *Id.* Appellant failed to articulate any category of offenses that the trial court's explanation erroneously included as admissible or what incorrect conclusion that Cheverria-Abrego reached, based on the court's explanation, regarding the possibility of his prior convictions being admitted.

Secondly, this case is distinguishable from *Morales* because there was no indication that the trial court's explanation had any effect on Cheverria-Abrego's election not to testify or his understanding of his right to testify. Importantly, the Court in *Morales* emphasized the "reasonable inference . . . that Morales intended to testify until the judge

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4 Explained by the Court of Appeals in *Beales v. State*:

> Crimes historically classified as *crimen falsi* include crimes in the nature of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense involving some element of deceitfulness, untruthfulness, or falsification bearing on the witness's propensity to testify truthfully.

329 Md. 263, 269-70 (1993) (Citation omitted).

advised him . . . that his convictions could be brought out to show whether he should be believed . . . ." *Id.* at 339. Thus, the Court held:

> Since Morales apparently changed his decision to testify based on the trial court's incorrect implication that all of his prior convictions could be used to impeach him, the defendant's decision to waive his constitutional right to testify and to exercise his constitutional right to remain silent was not knowingly and intelligently made.

Id.

Here, prior to the court's explanation of the State's ability to use prior convictions to impeach him, appellant clearly stated his intention not to testify -- "I don't want to speak." Unlike in *Morales*, following the trial court's statements regarding the possibility of impeachment by prior convictions, Cheverria-Abrego's decision did not change. Instead, he confirmed his earlier intention by stating "I'm going to remain silent." Therefore, even assuming *arguendo* that the trial court's advisement to Cheverria-Abrego did not properly limit the types of convictions that would have been admissible during his testimony, his ultimate decision not to testify in this case does not demonstrate his reliance on the trial court's explanation or the absence of his knowing and intelligent waiver.

On a similar note, Cheverria-Abrego fails to tie the trial court's explanation of the potential admissibility of his prior convictions to his own criminal history. Notably, he did not identify what offenses he incorrectly believed could be used against him if he decided to testify. In *Morales*, the Court of Appeals emphasized that, among Morales's past criminal convictions, which the Court analyzed individually, "[t]heft . . . was the only one . . . that was clearly admissible for impeachment purposes." *Id.* at 339. Because the trial

court's statements implied that certain inadmissible convictions in Morales's past could be used to impeach him if he testified, the Court of Appeals held that Morales had not made a knowing and intelligent waiver.

Moreover, in *Morales*, the defendant's prior convictions were revealed during the sentencing phase of trial. In this case, however, we have no clear record of Chevarria-Abrego's prior criminal convictions or the nature of any such offenses. As the Court in *Mora v. State* explained, "[i]t is incumbent upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed . . . ." 355 Md. 639, 650 (1999). We, therefore, would have no basis to determine whether the trial court's explanation likely led Cheverria-Abrego to believe, inaccurately, that certain of his past criminal convictions could be used against him if he testified on his own behalf. For all of these reasons, we conclude that Cheverria-Abrego failed to show that he did not waive his right to testify knowingly and intelligently.

II. Appellant Was Not Convicted of an Offense That Was Not Included in the Indictment.

Cheverria-Abrego's second argument on appeal is that the indictment, charging him with child sex abuse under CL § 3-602(b), did not include the crime for which he was convicted. Article 21 of the Maryland Constitution, Declaration of Rights provides "[t]hat in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence." The Court of Appeals explained, in *Ayre v. State*, that "[t]he purposes served by" the defendant's right to a copy of the charging document include "to put the accused

on notice" of what he or she "is called upon to defend by characterizing and describing the crime and conduct," as well as "to enable the defendant to prepare for . . . trial." 291 Md. 155, 163 (1981) (Citations omitted). The Court added that, "to place an accused on adequate notice," the charging document should "characterize the crime, and . . . it should furnish the defendant such as description of the particular act alleged to have been committed as to inform [the defendant] of the specific conduct . . . charged."[5] *Id.* at 163.

The criminal statute at issue prohibits the following:

> (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.

CL § 3-602(b). The statute defines "household member" as "a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse." CL § 3-601(a)(4); *see also* CL § 3-602(a)(3) ("'Household member' has the meaning stated in § 3-601 of this subtitle.").

The charging document in this case included the following under the second count of the indictment:

> The Jurors of the State of Maryland for the body of the City of Baltimore, do on their oath present that the aforesaid DEFENDANT(S), late of said City, heretofore on or about **October 2, 2015**, at **6444 O'Donnell Street Baltimore, MD 21224**, . . . did cause sexual abuse to [S], a minor, the defendant

[5] Regarding the required content of a charging document, see Md. Rule 4-202.

> being a **TO WIT: HOUSEHOLD MEMBER** who has permanent and temporary care and temporary care [sic] and custody and temporary responsibility for supervision of [S], against the peace, government and dignity of the State.
>
> CR 3-602(b) [. . .]

(Emphasis in original).

To the extent that Cheverria-Abrego argues on appeal that the charging document did not clearly indicate which subpart of CL § 3-601(b) he was charged with violating, we need not address arguments raising a deficiency in the charging document not raised before the trial court. Motions based on "[a] defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense" must "be raised by motion" or else "waived unless the court, for good cause shown, orders otherwise . . . ." Md. Rule 4-252(a)(2). Rather than arguing that the charging document was deficient, he argues that the evidence at trial was not sufficient to convict him under CL § 3-602(b)(1). The first of the two distinct subparts under the statute proscribes sexual abuse of a minor by a person who is responsible for the care, custody, or supervision of the minor child at issue, *see* CL § 3-602(b)(1), rather than the "household member" class of persons designated in the second subpart. *See* CL § 3-602(b)(2). Cheverria-Abrego contends that the indictment charged him with violating only subsection (b)(1).

Importantly, Cheverria-Abrego does not dispute that he fell within the statute's definition of a "household member" under CL § 3-602(b)(2) -- i.e. "a person who lives with or is a regular presence in [the] home of [the] minor" at issue. *See* CL § 3-601(a)(4) (defining "household member"). His argument, therefore, rests on the assumption that the

indictment did not charge him with or notify him of the State's allegation that he violated subsection (b)(2), providing that "[a] household member . . . may not cause sexual abuse to a minor." CL § 3-602(b)(2).

We explained the operation of the similar predecessor to CL § 3-601(a)(4) in *Tapscott v. State*:

> The statute specifies as one of the elements of the offense of child abuse that such abuse can be committed "by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member . . . ." These alternatives are in the disjunctive, setting forth several different classes of people who fall within the proscriptions of the statute.

106 Md. App. 109, 135 (1999), *aff'd*, 343 Md. 650 (1996) (Citations omitted) (discussing former Article 27, §35A (1992)).

To be sure, "[i]t is settled that the scope of the charge is limited by the allegation in the document, not by the statutory citation." *In re Areal B.*, 177 Md. App. 708, 714 (2007) (citing *Thompson v. State*, 371 Md. 473, 489 (2002)). We are not persuaded, however, by Cheverria-Abrego's argument that, "[w]hile the State charged appellant with violating § 3-602(b), as 'a household member **who has** permanent and temporary care . . . and custody and temporary responsibility for supervision' of the minor, the [circuit court] convicted him solely on his status as a household member." The statute provides two distinct modes in which a person may violate its proscriptions, which are separated into subparts (1) and (2). *See* CL § 3-602(b). Cheverria-Abrego seems to suggest that the State was required to prove that both subparts (1) and (2) applied to his circumstances because the indictment

included language describing both classes of individuals. As we explained in *Tapscott*, however:

> [A]n indictment for violation of [a statute creating an offense and specifying several types of acts] may properly allege the offense in one count by charging the accused in conjunctive terms with doing any of all of the acts, transactions, or means specified in the statute.

106 Md. App. at 135 (quoting *Morrissey v. State*, 9 Md. App. 470, 475–476 (1970)).

In *Tapscott*, we reversed the appellant's conviction for child abuse because the verdict sheet permitted the defendant's conviction of a crime that was not contained on the charging document. *Tapscott*, 106 Md. App. at 135-36 ("The individual questions posed by the verdict sheet, coupled with the jury instruction, allowed the jury to convict appellant of a crime for which he was not charged."). Here, however, the charging document indicated the State's allegation that Cheverria-Abrego fell within subpart (2) of CL § 3-602(b). Although the language used in the indictment left open the possibility that Cheverria-Abrego could be convicted as a person with "responsibility for the supervision" of the minor or other classes under subpart (1) of § 3-602(b), it also included the designation "household member" pursuant to paragraph (2).

At the conclusion of the bench trial, the court concluded, specifically, that Cheverria-Abrego "was a household member" when he had sexual intercourse with the thirteen-year-old minor. The trial court provided the following reasoning:

> **The Court finds as a fact that Mr. Cheverria-Abrego, the Defendant, was a household member** at 6444 O'Donnell Street inasmuch as he was a person who lived with or was a regular presence in the home of the minor, [S], at the time of

> the alleged offense; that there is no credible evidence before this Court that Mr. Cheverria-Abrego had any other presence in any other home as of the date of October 2nd, 2015. This is critically important here because on that date Mr. Cheverria-Abrego, **as a household member**, upon the credible evidence it is found as a fact went into the bedroom of [S] . . . and asked her to come to his bedroom to talk. Ms. [S] accepted that request and a physical interaction ensued with kissing, with [S] being unclothed and resulted in the Defendant engaging in vaginal intercourse with [S].

(Emphasis added).

Clearly, the trial court's guilty verdict was based, in part, on its factual finding that Cheverria-Abrego was a "household member" -- one of the "several different classes of people who fall within the proscriptions of the statute." *See Tapscott*, *supra*, 106 Md. App. at 135. The charging document conspicuously alleged that Cheverria-Abrego was a "**HOUSEHOLD MEMBER**" under CL § 3-602(b), providing him adequate notice of the State's allegation that he was a "household member" when he had sexual intercourse with the minor child. The trial court, therefore, did not convict Cheverria-Abrego of an offense not contained in the charging document when it found him guilty as a "household member" under CL § 3-602(b)(2).

In sum, Cheverria-Abrego was charged as violating CL § 3-602(b) generally, the indictment incorporated the elements required in both paragraphs (1) and (2), and the trial court found that Cheverria-Abrego was a "household member" under paragraph (2) of the statute. Cheverria-Abrego did not dispute that he fell within the definition of a "household member," and moreover, the evidence was more than sufficient for the trial court to find

that Cheverria-Abrego was a "household member" under CL § 3-602(b)(2). We, therefore, affirm the judgments of the circuit court.

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