Circuit Court for Worcester County
Case No. C-23-CR-24-000013

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1854

September Term, 2024

ERNEST LARRY CARL CLARK

v.

STATE OF MARYLAND

Arthur,
Shaw,
Beachley, Donald E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 24, 2026

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

Convicted by a jury in the Circuit Court for Worcester County of sexual abuse of a minor, third degree sexual offense, and related offenses, Ernest Larry Carl Clark, appellant, presents for our review a single issue: whether the court erred in admitting "underwear and related exhibits." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called A., who at the time was fourteen years old. A. testified that appellant is her father. On November 26, 2023, A. was in her room when appellant "call[ed] her out" to the dining room, where he stated that he "want[ed] to look at [the] lights in [A.'s] room." A. returned to her bedroom and told appellant that she was "ready for him to come back there." As A. sat "on the edge of the bed," appellant, who was wearing "[p]laid boxers," walked "in front of" A., pulled her leggings and underwear down to her ankles, and "scooted [her] closer to him." Appellant then touched the head of his penis to A.'s vagina, causing her to feel "a stabbing, burning sensation." Appellant subsequently "got on his knees on a purple rug . . . in front of [the] bed and did something of what you call jerking off," meaning "stroking his penis with his hand." The following day, A. told her gym teacher and guidance counselor "what was going on."

The State also called Detective Vicki Martin of the Worcester County Sheriff's Office, who testified that on November 27, 2023, she was called to A.'s school to interview her. During the interview, A. stated that

> [t]he night prior . . . her father had come into her room and attempted to put his boy bits, his penis, into her girl bits, which would be her vagina. He came into her room. She thought the electric was out in her room. And she thought initially that that's what it was for, was for him to try and troubleshoot why the electric was out in her room.

> When he came in he began to pull her – he put her down on the bed, and then he began by pulling down her tights and her underwear, and then attempted to insert his penis into her vagina. At one point she said, ow, it hurts. At some point he got up, he walked away because the dog was interfering. He came back. She tried to put her underwear and tights on again. He pulled them back off, and then he stopped for an unknown reason.

Following the interview, A. went to Atlantic General Hospital for a sexual assault forensic examination.

The State also called forensic nurse Eunice Esposito, who testified that she conducted the examination of A. During the examination, A. stated: "[H]e tried to have sex with me – tried to have sex this time with me. The dog was in a cage. He came in my room in his underwear. He pulls down the underwear and tried to get on top of me."

The State also produced evidence that Detective Martin obtained from A. a pair of underwear. Catherine Rust, a forensic scientist for the Forensic Sciences Division of the Maryland State Police, subsequently took a swabbing of the inside crotch of the underwear and tested it for DNA. Ms. Rust discovered on the swabbing a "DNA profile . . . consistent with the combined known profiles from" A. and appellant.

Appellant contends that the "court erred in admitting [A.'s] underwear and related exhibits." During A.'s testimony, the following colloquy occurred:

> [PROSECUTOR:] Do you remember how long you had been wearing that pair of underwear?
>
> [A.:] I was wearing it from what I remember all that weekend, and I'm pretty sure I wore them Friday, too.
>
> [PROSECUTOR:] So you think Friday, the weekend and to school on Monday?

[A.:] Yes.

[PROSECUTOR:] Okay. And did you ever take that pair of underwear off and put them in a hamper or a dirty clothes hamper?

[A.:] No.

During cross-examination, A. testified that "when [she] left school," she "went to the hospital so [she] could get examined." Later, Detective Martin came to A.'s house and "asked for the underwear and tights that [A.] had on that night." A. "was wearing the underwear," so when she "got home, [she] had to come and take the underwear off to give it to" Detective Martin. The detective "came up to the steps and put them in, like, a pouch." During redirect examination, A. confirmed that she had worn "the underwear that [she] gave to" Detective Martin "all weekend," and A. "actually had to go home and take them off to give them to her."

During Ms. Esposito's testimony, she stated, during cross-examination, that she "did not collect any clothing" from A., did not "recall seeing the underwear," and did not "recall . . . why [she] was not involved with collecting underwear." During Detective Martin's testimony, the following colloquy occurred:

[PROSECUTOR:] Why did you feel the need to collect her tights and underwear?

[DET. MARTIN:] Because they were the pieces of clothing that she wore the night prior. And usually if those are the pieces of clothing she was wearing and whoever the perpetrator is, you want to get those items for analysis. There's potential it might have DNA – suspected DNA on there.

[PROSECUTOR:] Is there any reason why Ms. Esposito didn't collect them?

> [DET. MARTIN:] They weren't – she didn't have them on. They were at the house.
>
> [PROSECUTOR:] Okay. So when you met with [A.] at the school, she was wearing a different pair of underwear than what you collected?
>
> [DET. MARTIN:] I believe so. I don't know.
>
> [PROSECUTOR:] You don't know. Thank you. So when you responded to [A.'s] residence that evening, what were your directions to her?
>
> [DET. MARTIN:] I asked her to get her underwear and tights for me and bring them to me, and she did that.

Detective Martin subsequently identified State's Exhibit 13 as "the chain of custody for the blue underwear and black tights or leggin[g]s," and a "bag marked blue underwear." Detective Martin also identified State's Exhibit 9 as "a photo of the underwear that [A.] gave the night that [the detective] asked for the underwear." When the prosecutor moved to admit the exhibits, defense counsel objected, stating:

> I'm objecting based on the chain of events and the chain of custody that led to the collection of the underwear. So the testimony that we have at this point from various witnesses, it is completely unclear whether [A.] was wearing these underwear or not. [A.] testified that she was wearing the underwear.
>
> Nurse Esposito had testified that she normally collected underwear if the patient was wearing the same underwear. And the detective initially testified that they were at the house, that [A.] was not wearing the same items. But then she didn't know if [A.] was wearing the same underwear.
>
> My understanding from [A.'s] testimony, I don't think that the detective got this specific, was that they went back to the house, she was permitted to go into the house to get the items. She was not accompanied by the detective. And then she brought the items to the detective who was waiting outside the house. So I would object to essentially the method in which these were collected as not being secured. We don't really know where they came from. No one saw where she got them from the house. No one can testify if they were on her or not on her.

> I think we have, what I would suggest, is conflicting information about whether she was wearing these underwear or not based on the testimony of the professional and based on the testimony of [A.] that we heard yesterday.

Overruling the objection, the court stated:

> Well, I appreciate your arguments. It strikes me that they go more towards the weight of the evidence, the weight that should be given by a jury to the evidence.
>
> All evidence that comes into the custody of law enforcement has an origin that might be suspect. Drugs that are recovered from a house that might be alleged to be attributed to a defendant, the defendant might say, well, there were ten other people in the house. There might be circumstances that cause a fact-finder to give less weight or credit to the impact of the evidence itself.
>
> The chain of custody is designed to protect once it is formally in the possession of law enforcement that it then is preserved. There's integrity to the process so that the results that might come from a lab analysis can be attributed to that specific item without fear of compromising. But again, the origin of that piece is oftentimes suspect. And that is best left to a fact-finder to determine, again, what weight or credit to give to that particular piece of evidence.
>
> So again, I note the concerns that you have. I don't disagree with those concerns, but I don't find that they are concerns that would impact the admissibility of the evidence itself.

The court subsequently admitted the exhibits.

During cross-examination, Detective Martin testified that when she went to A.'s residence, she "stayed . . . standing next to [her] car." Detective Martin "believe[d] that when [A.] came out" of her residence, "she had the tights and the underwear together in a plastic bag, and she just forced it on" the detective. During Ms. Rust's testimony, the State moved to admit her laboratory report. Defense counsel stated: "Just to ensure I don't say

something that fails to preserve, the previous argument about the chain of custody, I have no objection to the report, but maintain my objection to the admissibility of the evidence." The court noted defense counsel's "previous objections" and the court's "overruling to the chain of custody issues and those issues that [defense counsel] raised."

Following Ms. Rust's testimony, the State recalled A., and the following colloquy occurred:

> [PROSECUTOR:] When you gave her your underwear and leggin[g]s, where did you get the leggin[g]s from? Where were they?
>
> [A.:] I don't remember exactly where they were, but I remember, like I said, I had the underwear on.
>
> [PROSECUTOR:] Okay. The underwear was on?
>
> [A.:] Yes.
>
> [PROSECUTOR:] Okay. So did you go inside and take it off and then give it to Ms. Vicki?
>
> [A.:] Yes.

Appellant contends that because the "State . . . failed to negate the probability that the underwear had been tampered with between the time of the assault and the moment [A.] handed Det[ective] Martin [the] bag containing underwear and tights, . . . the . . . court erred in admitting the underwear and related evidence." We disagree. The Supreme Court of Maryland has stated that "[w]hen determining whether a proper chain of custody has been established[,] courts examine whether there is a reasonable probability that no tampering occurred." *Cooper v. State*, 434 Md. 209, 227 (2013) (internal citation and quotations omitted). "[T]he circumstances surrounding an item of evidence's safekeeping

in that condition that is substantially the same as when it was seized in the interim need only be proven as a reasonable probability, and in most instances is established by responsible parties who can negate a possibility of tampering and thus preclude a likelihood that the thing's condition was changed." *Id.* at 228 (internal citation, quotations, and brackets omitted).

Here, it is true that Ms. Esposito testified that she did not collect any clothing from A., and Detective Martin testified that when she met with A. at her school, the detective did not know whether A. was wearing a different pair of underwear than what Detective Martin collected. But, A. repeatedly and consistently testified that she wore the underwear from the time of the offenses until the time of Detective Martin's collection, and that the underwear that A. gave to the detective was the underwear that A. wore at the time of the offenses and to school on the day that she met the detective. This testimony was sufficient to negate a possibility of tampering with the underwear and thus preclude a likelihood that the underwear's condition was changed, and hence, the court did not err in admitting the underwear and related exhibits.

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