UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1602

September Term, 2015

JOSHUA AMEN HUFFMAN

v.

STATE OF MARYLAND

Graeff,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 5, 2016

*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.

On May 28, 2015, a jury in the Circuit Court for Wicomico County convicted Joshua Amen Huffman, appellant, of second-degree sexual offense, sexual abuse of a minor, third-degree sexual offense, second-degree assault, and causing the ingestion of bodily fluid.[1] Huffman was sentenced to incarceration for a term of life for the second-degree sexual offense conviction. The remaining convictions merged for sentencing purposes. This timely appeal followed.

QUESTIONS PRESENTED

Huffman presents the following questions for our consideration:

I. Was the evidence legally insufficient to support the conviction for second-degree sexual offense?

II. Was the evidence legally insufficient to support the conviction for causing the ingestion of a bodily fluid?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The charges against Huffman were based on events that the State maintained occurred on February 29, 2012, when T.T., who was born on June 22, 2006, was spending the night at Huffman's home. T.T.'s mother, Tiffany T., testified that in February 2012 she was taking night classes and her husband, Douglas T., worked a nightshift. On nights when she and Douglas T. were both away from home attending class and work, T.T. stayed

[1] Huffman was initially tried in July 2012 and convicted of sexual abuse of a minor, two counts of second-degree sexual offense, third-degree sexual offense, second-degree assault, and causing the ingestion of bodily fluids. In a subsequent appeal, we reversed on grounds unrelated to the instant appeal. *Huffman v. State*, No. 1847, Sept. Term 2012 (filed December 9, 2014).

with Tiffany T.'s friend, Jaime Hammond. Hammond lived in a home on West Walnut Street, in Hebron, with her grandparents, Huffman, and Huffman's daughter, Piper, who was T.T.'s best friend.

On the night of February 29, Tiffany T. made arrangements for T.T. to spend the night at Piper's house. The following day, T.T. rode the bus to school with Piper. After school, she rode her own bus home. Upon returning home from school, T.T. told Tiffany T. that while she was sleeping at Piper's house, Huffman woke her up, put his "wiener in her mouth," and "peed in it." Tiffany T. asked T.T. where Hammond was when this occurred and T.T. said she was sleeping. Tiffany T. called Hammond and told her what T.T. reported. Tiffany T. told T.T. that "lying is not good," "[t]hat people can get in a lot of trouble for lying," and that there were consequences for lying. Tiffany T. also told T.T. that people go to jail for lying. Tiffany T. waited for about 45 minutes to make sure that there were no changes in what T.T. had reported, and then called the police.

T.T., who was eight years old at the time of the underlying trial, testified that while she was asleep in a bed she was sharing with Piper, Huffman entered the bedroom, woke her up, "took [her] into" an office that had a computer, papers, drawers, and some candy, and tried "to make [her] suck up on his private." T.T. stated that she did not suck Huffman's "private," but he put it in her mouth and "peed." T.T. testified that the pee came out of Huffman's "private" and that she "spit it into a trash can" that was in the office. T.T. did not remember whether Huffman said anything to her. After spitting into the trash can, T.T. went back to Piper's room and went to sleep.

Heather Sullivan, a licensed clinical social worker and child protective services investigator at the Child Advocacy Center, was assigned to investigate the incident reported by T.T. On March 2, 2012, Sullivan interviewed T.T., who was then five years old, and that interview was recorded on a DVD. The DVD of the interview and a written transcript of it were admitted in evidence without objection and the DVD was played for the jury.

In the recorded interview, T.T. reported that Huffman was in jail because "[h]e threw something at" her and "took a clip from her." She stated that he did not do or say anything to her and that she would like to go back to Huffman's house to spend the night because her friend lived there. At one point, she denied that anyone had ever shown her a "wiener." However, after further questioning, T.T. told Sullivan that "[a] short time ago," while she was sleeping in Piper's bed with Piper, and when it was dark outside, Huffman woke her up and "dragged" her to an office. He took his "wiener" out of his pants and put it in her mouth. At one point, he "stopped" but then he put his "wiener" back into her mouth and "peed" in her mouth. T.T. stated that she spit out the "pee" in a trash can in the bathroom and went back to bed.

Detective John Seichepine of the Wicomico County Sheriff's Office was assigned to the Wicomico County Child Advocacy Center in March 2012. On March 2, 2012, he began an investigation of the incident reported by T.T. He watched Sullivan's interview of T.T. from a separate room and obtained a DNA sample from T.T. Thereafter, he obtained a search warrant for Huffman's home on West Walnut Street. He described the home as a two story building with one bedroom on the first floor and two bedrooms, a bathroom, and "an office area" on the second floor. Detective Seichepine seized a black

trash can and its contents from the office area, a white trash can and its contents from the bathroom, a toothbrush, and a Tinkerbell nightgown. He also collected a DNA sample from Huffman. Both trash cans, the nightgown, the toothbrush, and the DNA samples collected from Huffman and T.T. were sent to the Maryland State Police Crime Lab for analysis.

On the evening of March 2, Detective Seichepine interviewed Huffman, who advised that his birth date was January 19, 1977. Huffman stated that when he got home from work that morning, he got T.T. and Piper ready for school and walked them to the bus stop.

Amy Kelly, a forensic scientist employed by the Maryland State Police, conducted forensic testing for the presence of blood and semen on the white trash can, the nightgown, and the toothbrush, but the result for each item was negative. Testing on the black trash came back positive for the presence of semen. The DNA from that semen matched Huffman's DNA, but no DNA from T.T. was found. According to Kelly, no tissues were found in the black trash can. Kelly testified that the amylase test, which is performed to detect saliva, was one of the least sensitive tests performed and that it could give a negative result even when saliva is present. Kelly acknowledged that she could not determine when Huffman's sperm was deposited into the black trash can.

Huffman testified on his own behalf. He admitted that he lived in the house on West Walnut Street with his daughter, Piper, his fiancée, Jaime Hammond, and Hammond's grandparents. He worked at a Food Lion grocery store, typically from 11:00 p.m. to 7:00 a.m. Huffman acknowledged that T.T. stayed at his home on February 29, 2012, but denied

that he was responsible for watching her. He claimed that Hammond and her grandparents were responsible for watching T.T. Huffman denied any type of sexual contact with T.T. He denied that he put his penis in T.T.'s mouth and that he ejaculated or "peed" in her mouth. Huffman explained that the semen in the black trash can was deposited there because he "occasionally looked at porn and would masturbate in the trash can on occasion."

DISCUSSION

Huffman challenges the sufficiency of the evidence to support his convictions on two grounds. He argues that the State failed to present sufficient evidence of force to support a conviction pursuant to § 3-306(a)(1) of the Criminal Law Article and failed to establish that T.T. ingested any bodily fluids so as to support a conviction pursuant to § 3-215 of the Criminal Law ("CR") Article. When considering a challenge to the sufficiency of the evidence, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). *See also Jones v. State*, 440 Md. 450, 454-55 (2014) (quoting *Hobby v. State*, 436 Md. 526, 538 (2014)). We 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." *Harrison v. State*, 382 Md. 477, 487-88 (2004) (and cases cited therein). In performing its function, the jury is free to accept the evidence it believes and reject that which it does not believe. *Coleman v. State*, 196 Md. App. 634, 649 (2010) (citing *Muir v. State*, 64 Md. App. 648, 654 (1985)). When

reviewing a challenge to the sufficiency of the evidence, we "view the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State." *Hackley v. State*, 389 Md. 387, 389 (2005) (citations omitted).

In cases where determining the sufficiency of the evidence "involves an interpretation and application of Maryland statutory and case law," we "must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Rodriguez v. State*, 221 Md. App. 26, 35 (2015) (internal quotations and citations omitted).

With these standards in mind, we turn to the contentions raised in the case at hand.

I.

Huffman contends that the evidence was insufficient to support his conviction for second-degree sexual offense based on the use of force or threat of force. Huffman was charged with second-degree sexual offense pursuant to CR §3-306, which provided then, as it does now:

> (a) *Prohibited*. – A person may not engage in a sexual act with another:
>
> (1) by force, or the threat of force, without the consent of the other;
>
> * * *
>
> or
>
> (3) if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim.
>
> (b) *Age considerations*. – A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

> (c) *Penalty*. – (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment not exceeding 20 years.
>
> (2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.
>
> (ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.
>
> (iii) The person is not eligible for parole during the mandatory minimum sentence.
>
> (iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum shall not apply.

Md. Code (2002 Repl. Vol.; 2012 Supp.) §3-306 of the Criminal Law Article ("CL").

Huffman was convicted of engaging in a sexual act with T.T. by force, or the threat of force, without T.T.'s consent, CR § 3-306(a)(1), and by engaging in a sexual act with T.T., who was under the age of 14 years, when Huffman was at least 4 years older than her, in violation of CR §3-306(a)(3). The jury specifically found that T.T. was under the age of 13 at the time of the offense. As a result, pursuant to subsection (b), Huffman was sentenced according to the enhanced penalty provisions set forth in CR § 3-306(c)(2). Huffman contends that the evidence was insufficient to support his conviction for second-degree sexual assault by force, or the threat of force, without T.T.'s consent.[2]

[2] As Huffman points out, his conviction under CR § 3-306(a)(1) and (b) affected his sentence. Section 3-306(c)(1) provides that a person convicted of second-degree sexual offense, under either subsection (a)(1) or (a)(3) is subject to imprisonment not exceeding 20 years. However, when a person 18 years of age or older violates subsection (a)(1) involving a child under the age of 13 years, he or she is subject to imprisonment for not less than 15 years and not exceeding life. CR § 3-306(c)(2)(i). In addition, (continued…)

Specifically, Huffman argues that because T.T. never testified that he threatened her with force or that she was afraid, a rational trier of fact could not infer that she "was placed in reasonable apprehension of imminent bodily injury of such a nature as to impair or overcome her will to resist." He further argues that there was no evidence of actual force during the sexual act other than the act itself. We disagree and explain.

In *State v. Mayers*, the defendant was convicted of second-degree sexual offense and other crimes. *Mayers*, 417 Md. 449, 451 (2010). Mayers appealed, arguing that there was insufficient evidence of force or the threat of force to sustain his conviction for second-degree sexual offense. *Id.* at 465-66. The Court of Appeals rejected Mayers's assertion that proof of physical violence was required. *Mayers*, 417 Md. at 475-76. In reaching that conclusion, the Court observed that force had been "recognized as essentially a subjective element as measured, in part, by the victim's resistance, because 'it cannot be said that all women would use the same amount of resistance, or that every woman would act in the same way at all times.'" *Id.* at 468 (quoting *Hill v. State*, 143 Md. 358, 367 (1923)). The Court recognized "the notion of force as coextensive with resistance on the part of the victim and also emphasize[d] that resistance is relative and should be measured by the fact-finder." *Id.* at 468.

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the court may not suspend any part of the mandatory minimum sentence of 15 years, and the person is not eligible for parole during the mandatory minimum sentence. CR § 3-306(c)(2)(ii) and (iii). Had Huffman been convicted only of violating § 3-306(a)(3), and not (a)(1), he would not have been subjected to the enhanced sentencing provisions of CR § 3-306(c)(2), but would have been sentenced, under CR § 3-306(c)(1), to imprisonment not exceeding 20 years.

In addressing the required element of force in a rape case, the Court in *Hazel v. State*, reached a similar conclusion, stating:

> Force is an essential element of the crime and to justify a conviction, the evidence must warrant a conclusion either that the victim resisted and her resistance was overcome by force or that she was prevented from resisting by threats to her safety. But no particular amount of force, either actual or constructive, is required to constitute rape. Necessarily that fact must depend upon prevailing circumstances. As in this case force may exist without violence. If the acts and threats of the defendant were reasonably calculated to create in the mind of the victim – having regard to the circumstances in which she was placed – a real apprehension, due to fear, of imminent bodily harm, serious enough to impair or overcome her will to resist, then such acts and threats are the equivalent of force.

Hazel, 221 Md. 464, 469 (1960).

Similarly, in *Robinson v. State*, we stated that the "creation of certain conditions may, depending on the circumstances, make unnecessary the need for outward expressions of force." *Robinson v. State*, 151 Md. App. 384, 398-99 (2003). We have also recognized that in cases of rape or sexual offense,

> the conduct need not always be so blatantly "forceful." Rather, the perpetrator's creation of certain conditions may, depending on the circumstances, obviate the need for such outward expressions of force.
>
> * * *
>
> The law is clear that "no particular amount of force, either actual or constructive, is required to constitute rape. Necessarily, that fact must depend upon the prevailing circumstances." In light of the myriad of circumstances that can arise, the reasonableness of a victim's nonresistance is usually best left to the fact finder.

Martin v. State, 113 Md. App. 190, 246-47 (1996)(internal citations omitted).

In the case at hand, T.T. testified that she did not want to go into the "other room" with Huffman. She stated that Huffman, who held her by the hand, took her into the office, put his "private" in her mouth, and tried "to make" her "suck up his private." In the recorded interview with Sullivan, T.T. stated that Huffman "dragged" her into his office. Further, the jury had evidence before it, and was free to consider, T.T.'s age and size, as compared to Huffman's age and size. This evidence was sufficient to permit a rational trier of fact to find beyond a reasonable doubt that five-year-old T.T., who did not want to go into the office with Huffman, resisted to the best of her ability and that Huffman overcame that resistance by employing force or the threat of force when he took her hand, dragged her into the office, and stuck his penis in her mouth twice before "peeing" inside it. We affirm.

II.

Huffman also argues that the evidence was insufficient to support his conviction, under CR § 3-215, which at all times relevant to this case, provided:

> (a) "*Bodily fluid" defined.* – In this section, "bodily fluid" means seminal fluid, blood, urine, or feces.
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> (b) *Ingesting bodily fluid.* – A person may not knowingly and willfully cause another to ingest bodily fluid:
>
> (1) without consent; or
>
> (2) by force or threat of force.
>
> (c) *Penalty*. – A person who violates subsection (b) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a find not exceeding $2,500 or both.

A. Huffman's Arguments at Trial

At trial, Huffman moved for judgment of acquittal at the close of the State's case, arguing, among other things, that there was no evidence that T.T. ingested anything because she spit the substance that was in her mouth into a trash can. The State countered that it was sufficient that the substance was placed in T.T.'s mouth and there was no requirement that she swallow all or part of it. The court denied the motion.

At the close of the evidence, Huffman renewed his motion for judgment of acquittal, again arguing that the term "ingest," as used in CR § 3-215, meant, colloquially, to consume, to eat, and to take into the stomach. In addition, Huffman requested a jury instruction clarifying that the statute required the substance to be "taken into the stomach." The court denied Huffman's requested jury instruction and reserved ruling on the motion for judgment of acquittal.

After the jury rendered its verdict, the trial court ruled on Huffman's motion for judgment of acquittal, stating:

> I had reserved ruling on the motion for judgment of acquittal. In particular, I wanted to see what research we could do very quickly at least on this definition on ingestion, and we found – we do not have the legislat[ive] history, and nobody presented that. We have found Webster's New Collegia[te] Dictionary defines ingest as to take in for or as if for digestion. [A]lso then it says, absorb means ingestible. It has absorb [means] ingestible, ingestion, ingested. And then the Merriam Webster online dictionary has ingest, to take something [(]something such as food[)] into your body, [:] to swallow something.
>
> I don't think it's clear that ingest requires something to be swallowed. It does seem to indicate it just comes into the

> orifice, so I'm going to deny the motion for judgment of acquittal as to that.

B. Huffman's Arguments on Appeal

On appeal, Huffman again argues that no substance was ingested, as required by the statute. He asserts that "the ordinary and every day meaning of 'ingest' means to swallow, as one would ingest medicine," and that because certain dictionary definitions include the words "to swallow," an interpretation of the plain language of the statute cannot exclude that interpretation. In addition, Huffman directs our attention to the legislative history pertaining to CR § 3-215. He maintains that in enacting the statute, the General Assembly was addressing the fact that Maryland did not have a law prohibiting the contamination of food or drink with bodily fluids. He asserts that CR § 3-215 "was never intended to be applied to the action in the case at bar that are already squarely prohibited by § 3-306 and related statutes prohibiting sexual acts."

C. Statutory Construction

The principles of statutory construction are well established. The cardinal rule of statutory construction is to ascertain and effectuate legislative intention. *State v. Green*, 367 Md. 61, 81 (2001) (and cases cited therein). Our "'quest to discover and give effect to the objectives of the legislature begins with the text of the statute.'" *Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 251 (2000) (quoting *Huffman v. State*, 356 Md. 622, 628 (1999)). "'[I]f the plain meaning of the statutory language is clear and unambiguous, and consistent with both the broad purposes of the legislation, and the specific purpose of the provision being interpreted, our inquiry is at an end.'" *Thomas v.*

Dep't of Labor, Licensing, and Regulation, 170 Md. App. 650, 659 (2006) (quoting *Breitenbach v. N.B. Handy Co.*, 366 Md. 467, 473 (2001)). *See also Adamson*, 359 Md. at 251 (and cases cited therein) (if the legislature's intentions are evident from text of statute, inquiry will cease and plain meaning of statute will govern).

"'Where the statutory language is plain and unambiguous, a court may neither add nor delete language so as to 'reflect an intent not evidenced in that language.'" *Chesapeake & Potomac Telephone Co. v. Director of Finance for Mayor and City Council of Baltimore*, 343 Md. 567, 579 (1995) (quoting *Condon v. State*, 332 Md. 481, 491 (1993)). We will avoid constructions that are "illogical, unreasonable, or inconsistent with common sense." *Frost v. State*, 336 Md. 125, 137 (1994). Moreover, we will not engage "'in a forced or subtle interpretation in an attempt to extend or limit the statute's meaning.'" *Nesbit v. GEICO*, 382 Md. 65, 76 (2004) (quoting *Taylor v. NationsBank*, 365 Md. 166, 181 (2001)).

"We bear in mind, however, that the plain meaning rule is elastic, rather than cast in stone." *Adamson*, 359 Md. at 251 (citing *Kaczorowski v. Mayor of Baltimore*, 309 Md. 505, 513 (1987)). "If persuasive evidence exists outside the plain text of the statute, we do not turn a blind eye to it." *Id.* We may consider the context in which the statute appears, related statutes, legislative history, and other sources for a more complete understanding of what the General Assembly intended when it enacted particular legislation. *Id.; Ridge Heating, Air Conditioning & Plumbing v. Brennan*, 366 Md. 336, 350-51 (2001). Indeed, in seeking to determine a term's ordinary and popular meaning, we may "consult a dictionary or dictionaries." *Chow v. State*, 393 Md. 431, 445 (2006).

The language of CR § 3-215 is not ambiguous, and there is no need to consult the legislative history to resolve the issue before us. The statute clearly defines both seminal fluid and urine as bodily fluids. There was evidence presented below from which the jury could have found that Huffman caused at least one of those bodily fluids to be placed in T.T.'s mouth. The issue to be resolved is whether the word "ingest" required T.T. to swallow the substance Huffman placed in her mouth.

The word "ingest" is defined as "to introduce (aliment) into the stomach (or mouth)" and "to take in (food)." *The Oxford English Dictionary* 285 (Clarendon Press, 1933). Similarly, it has been defined as "to take in for or as if for digestion," "to take in for digestion (as into the stomach)," and "to take in." *Merriam Webster's Collegiate Dictionary* 642 (11th ed. 2006); *Webster's Third New Int'l Dictionary of the English Language*, *Unabridged* 1162 (2002). The word is derived from the Latin term "ingestus," which means "to carry in." *Webster's Third New Int'l Dictionary of the English Language, Unabridged* at 1162; *Merriam Webster's Collegiate Dictionary* at 642.

It is a matter of common knowledge, and we take judicial notice of the fact, that the human digestive system is made up of a series of hollow organs that begins at the mouth. *See generally*, "*The Digestive System*," The World Book Encyclopedia, Vol. V, 202 (2016)("Digestion begins in the mouth."); "*Your Digestive System and How it Works,"* U.S. Department of Health and Human Services, National Institute of Diabetes and Digestive and Kidney Diseases, https://perma.cc/S7S3-4W9T, (link created October, 3 2016); "*The Structure and Function of the Digestive System*, Cleveland Clinic Health Information, Diseases & Conditions,

http://myclevelandclinic.org/health/diseases_conditions/hic_The_Structure_and_Function_of_the_Digestive_System, (last visited September 29, 2016).

Notwithstanding Huffman's argument that the statute at issue was enacted to address the contamination of food and drink with bodily fluids, the statutory language does not contain any mention of food or drink. Nor does it specifically require a person to swallow or digest the bodily fluid, although certainly the General Assembly could have included such a requirement if it desired to do so. The plain language of the statute requires only that the bodily fluid be taken into the victim's body "for or as if for digestion." In the instant case, Huffman caused T.T. to take his bodily fluid into her mouth, the beginning of her digestive system. That act constituted the ingestion of bodily fluid under CR § 3-215. Therefore, we affirm.

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