Circuit Court for Baltimore City
Case No. 116035029

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2545

September Term, 2016

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RICHARD KEYSER

v.

STATE OF MARYLAND

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Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: January 16, 2018

Appellant Richard Keyser appeals from the judgment of conviction in the Circuit Court for Baltimore City for the offense of child sexual abuse. He raises two issues for our review, which we have rephrased slightly:

1. Did the trial court abuse its discretion by denying appellant's two motions for a mistrial?

2. Is the evidence legally insufficient to support appellant's conviction of sexual child abuse?

We answer both questions in the negative and shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore City in an indictment containing twenty-six charges, involving two complaining witnesses, including sexual child abuse, sexual offenses, and assault in the second degree. The cases were severed before trial, leaving thirteen charges in this case. The jury found appellant guilty of ten of those charges, and appellant filed a motion for a new trial. The trial court granted the motion on nine of the ten counts, leaving in place only the conviction on count I, sexual child abuse. The court sentenced appellant to a term of incarceration of twenty-five years, all but eighteen years suspended, followed by five years' probation, supervision in the COMET program while on probation,[1] and lifetime sexual offender registration.

[1] The COMET (Collaborative Offender Management Enforcement Treatment) program supervises sexual offenders following their release from prison. *See Russell v. State*, 221 Md. App. 518, 522–24 (2015).

At trial, the State called four witnesses: (1) S.S., the eight year old complaining witness, (2) Ashley P., the mother of S.S.,[2] (3) N.M., an eight year old who lived previously with her mother and appellant, and (4) Baltimore City Detective Mohammed Ali, the Child Abuse Unit case investigator. Appellant elected not to testify but called as his only witness Aletea Miller, Harford County Child Advocacy Center forensic examiner.

S.S. testified that she knew appellant because she spent nights at his home while her mother went to work. She related an incident that took place at appellant's home when she was seven years old and her sister and others were asleep. She stated that "me and [N.M.] was in the bathtub and he blindfolded me and put a towel on the ground and laid me down." She testified that he touched her with his tongue, entered her "private area," and that it felt "slimy and gross." She did not tell her mother because she was scared, and appellant told her not to tell anyone. She later told her mother and a school counselor about the incident.

N.M., eight years old at the time of the trial, testified that she knows appellant and that she used to live with him and her mother. She related, *inter alia*, that when she was with appellant and S.S., she and S.S. played together in the bathtub, and when they got out of the bath, appellant blindfolded her with her leggings. During her testimony, the State asked her whether she knew appellant. Following her "yes" response, the State asked her how she knew him. N.M. responded, "[b]ecause he did a very bad thing to me." Appellant moved for a mistrial, which the trial court denied, reasoning that a mistrial is the remedy

[2] Ashley P.'s testimony does not relate to any of the issues raised in this appeal.

of last resort, that "a bad thing" to a child could be many things besides criminal acts or sexual contact, and that any prejudice could be remedied.

Detective Ali testified that he investigated the case involving S.S., and although he did not interview her, he reviewed the child abuse unit interview of her and he drafted a statement of charges. On redirect examination, he testified as follows:

> "[THE STATE]: With respect to your Application of Statement of Charges, was there an indication from the—more than one girl, that the children were blindfolded?
>
> [DETECTIVE ALI]: Yes.
>
> [THE STATE]: And which girls were those?
>
> [DETECTIVE ALI]: [Sister of S.S.] and [N.M.]."

Appellant again requested a mistrial, telling the court that "the Detective was instructed . . . not to discuss anything about [Sister of S.S.] or the charges against that had to do with [her]." The court denied the motion for a mistrial, but instructed the detective not to use the sister's name again.

Appellant called Harford County Child Advocacy Center Forensic Examiner Aletea Miller as his only witness. She had interviewed S.S. on June 10, 2015, and in response to her question as to whether anyone had placed his mouth on her body, S.S. did not give a positive response.[3] S.S. did tell her that appellant touched her on her "kitty cat."

[3] Appellant represented in his brief that S.S. answered Ms. Miller's question with the word "no". Asked at trial whether S.S. answered the question with a "no," Ms. Miller said only, "I know that I did not get a positive response."

As noted, the jury returned guilty verdicts on nine of the ten counts. The trial court granted appellant's motion for a new trial on nine counts,[4] leaving the conviction for count I, child sexual abuse, undisturbed. The court imposed sentence and this timely appeal followed.

II.

Before this Court, appellant argues that the trial court erred in denying his two mistrial motions, and that the evidence was insufficient to support his conviction of child

[4] In granting a new trial on the nine counts, the court explained as follows:

> "THE COURT: [Jury Verdict Sheet Questions 2–5 are for sexual offense in the second degree, sexual offense in the third degree, sexual offense in the fourth degree, and assault in the second degree, respectively, for the period October 1, 2014 through December 1, 2014.] Consequently, I should say what follows on the verdict sheet are essentially those questions again recited, but incorporating various periods of approximately 90 days pursuant to the law with regard to the sex offenses alleged as to second degree, third degree, fourth degree and second degree assault, meaning after December 31, 2014 the next time period referenced on the jury verdict question sheet is January 1, 2015 through March 31, 2015, and then the next time period is April 1, 2015 through April 30, 2015.
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> ***
>
> The crushing weight of the evidence is that that verdict that it occurred on three separate occasions simply cannot be so. It cannot be so. The victim [S.S.] testified that she was only assaulted once. The State framed the case as revolving around a single sexual incident.
>
> ***
>
> [T]he Court strikes the jury verdicts as to counts two, four, five, six, eight, nine, ten, 12, and 13[.]"

sexual abuse. As to the mistrial motions, he argues that the two references to other events and witnesses, one by N.M., and one by the detective, were highly prejudicial and that a mistrial was necessary to serve the ends of justice. As to the sufficiency of the evidence for child sexual abuse, he argues the same grounds he raised at his motion for judgment of acquittal: that there was no corroborating evidence[5] for S.S.'s testimony and no proof that appellant did the alleged acts for the purpose of sexual arousal or gratification. He adds an additional argument here that he did not raise below: that S.S.'s testimony was not consistent with the statements she made to her mother and to the forensic examiner, and hence, her testimony was unreliable.

The State argues that the trial court, best suited to assess prejudice, exercised its discretion properly in denying the mistrial. N.M.'s statement that appellant had done a bad thing to her could be interpreted by the jury as referring to the fact that appellant had blindfolded her, testimony which was admitted appropriately, and was not necessarily interpreted as referring to a separate, inadmissible sexual act. Detective Ali's reference to S.S.'s sister, according to the State, was a slip of the tongue, one easily made because the sister and S.S. had similar sounding first names, both beginning with S. In addition, the detective afterwards clarified on the stand that he meant the victim in this case, and not her sister. As to the sufficiency of the evidence, the State argues that appellant concedes that the State's evidence established the elements of the crime of sexual abuse beyond a

[5] Appellant acknowledges in his brief, citing *Branch v. State*, 351 Md. 733, 750 (1986), that "the testimony of a single eyewitness, if believed, is sufficient to obtain a conviction."

reasonable doubt, and that the reliability or credibility of the witness or evidence was for the jury to determine.[6]

III.

We hold that the trial court did not abuse its discretion in denying appellant's motions for a mistrial. Indeed, a mistrial is an extraordinary remedy, an extreme sanction to be resorted to when no other remedy will suffice to cure prejudice to the accused. *See Rutherford v. State*, 160 Md. App. 311, 323 (2004). The trial judge is in the best position to assess the degree, if any, that a defendant has been prejudiced by error. *State v. Hawkins*, 326 Md. 270, 278 (1992). The test is whether the defendant has been deprived of a fair trial.

Both comments, while error, did not rise to the level of requiring the trial judge to declare a mistrial. N.M.'s statement that appellant did "a very bad thing to me" did not refer explicitly to any sexual conduct, and could well have been interpreted in different ways. The detective's single comment, in context, cannot be interpreted as an intentional act to inject other victims, and he clarified that he meant the victim in this case, not her sister. We cannot say that the trial judge abused his discretion in denying a mistrial.

As for the sufficiency of the evidence, the State is correct. The testimony of S.S., as appellant concedes, on its face, supports each element of the offense of child abuse. The

[6] The State does not argue that appellant did not preserve the "reliability" argument for failure to raise that before the trial court in his motion for judgment of acquittal.

testimony was not so inconsistent or inherently unbelievable to take the issue from the jury, whose job it is to determine credibility and reliability. We hold that the evidence was sufficient that 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); *State v. Suddith*, 379 Md. 425, 429 (2004).

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