Circuit Court for Wicomico County
Case No. C22-CR-17-000768

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2066

September Term, 2018

ALONZA KEITH BRIDDELL

v.

STATE OF MARYLAND

Fader, C.J.,
Wells,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: March 5, 2020

A jury trial sitting in the Circuit Court for Wicomico County, convicted appellant, Alonza Keith Briddell[1], of sexual abuse of a minor, sexual abuse of a minor family member, second-degree sexual offense, third-degree sexual offense, fourth-degree sexual offense, and second-degree assault. The court sentenced him to a term of 15 years for sexual abuse of a minor. The court imposed a consecutive 15-year term of incarceration for the second-degree assault and the court merged the remaining counts at sentencing. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents three questions for our consideration:

> I. Did the pre-trial hearing judge err by ruling that the alleged victim's recorded interviews with social workers were admissible?
>
> II. Did the trial judge abuse his discretion by restricting defense counsel's cross-examination of Lola Briddell, a witness for the prosecution?
>
> III. Is the evidence legally insufficient to sustain appellant's convictions?

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

FACTUAL BACKGROUND

S.F., a minor born on August 16, 2011, spent the weekend of August 18-20, 2017 at the home of her paternal grandmother, Lola Briddell, and Ms. Briddell's husband, appellant, whom S.F. referred to as Pop Pop Alonza. When S.F. returned to her own home on Sunday, August 20, 2017, her mother, S.E., noticed that she was "a little quiet." S.F.

[1] At times in the record, appellant's first name is spelled "Alonzo," but in the charging documents and the parties' briefs on appeal, his name is spelled "Alonza." For the sake of consistency, we shall use the name "Alonza."

told her mother that she had something to tell her, but she did not want to get in trouble. S.E. kept asking S.F. what she wanted to say and, finally, S.F. told her that "Pop Pop Alonza had put his fingers in her butt."

S.E. went to a State Police Barracks and then to a hospital in Delaware, where she and S.F. lived, but she was directed to Maryland authorities because the incident had reportedly taken place at the Briddells' home in Wicomico County, Maryland. Six days later, on August 26, 2017, S.E. reported the incident to the Maryland State Police. At trial, S.E. speculated that her delay in reporting the incident to Maryland authorities was "probably" because she "had to work, because [she] work[ed] all the time." She also explained that she had 4 children, including S.F., and, at the time of the incident, she was expecting her 5th child. In addition, her husband did not have a driver's license and did not drive.

S.F.'s case was referred to Detra Kelly, a licensed clinical social worker assigned as a child protective service worker with the Wicomico County Department of Social Services. Ms. Kelly interviewed S.F. at the Wicomico County Child Advocacy Center on August 26, 2017. The interview was audio and video recorded and, over objection, was played for the jury at trial.

After her interview with Ms. Kelly, S.F. was brought to the emergency room at Peninsula Regional Medical Center in Salisbury. Eunice Esposito, a forensic nurse examiner who testified as an expert in forensic sexual assault examinations, met with S.F., who said that "Pop-Pop put his fingers in me[.]" S.E. advised Ms. Esposito that S.F. had been in the care and custody of someone else between August 19 and 20, 2017, and that

she had disclosed the occurrence earlier that day, August 26, 2017. No abnormalities were found in S.F.'s anal or genital areas and there were no findings of concern during the physical examination. Ms. Esposito testified that she did not expect to find a significant injury in light of the time frame and because the allegation was of touching. No swabs for DNA were collected because S.F. had bathed.

On September 6, 2017, S.F. was interviewed again by Devan Sample, another social worker at the Child Advocacy Center. Ms. Sample conducted the interview because she was taking over S.F.'s case from Ms. Kelly, who was transitioning to a supervisor position. Ms. Sample's interview with S.F., which was video and audio recorded, was played, over objection, for the jury.

S.F. testified at trial that she last saw Pop Pop Alonza when she was at her grandmother's house. Her grandmother was not there because she had gone to work and there were no other adults in the house. During that time, S.F. recalled that a dental cap came off one of her teeth and she told appellant about it. At some point, S.F. was asleep in her grandmother's bed because she was afraid of the dark. Her clothing was on and Pop Pop Alonza was in the bed with her when he touched her inside her butt with his finger. When asked how she knew that his finger was inside her if she was asleep, S.F. stated, "[b]ecause I felt it." S.F. was also asked how appellant could touch her butt if her clothing was on and she replied, "I don't know, but I felt something."

When asked whether the social workers or her mother told her what to say in court, or told her that they wanted her to testify about what appellant did to her, S.F. said, "I don't know." She shrugged when asked if anyone told her to make up a story about Pop Pop,

but then said she did not remember anyone telling her to do that. She stated that her testimony that Pop Pop put his fingers in her butt was "[t]he truth."

There was conflicting testimony about the amount of time S.F. spent at her grandmother's home. S.E. testified that S.F. visited Mrs. Briddell and appellant in their home about once a month. S.E. had never had any issue with appellant, but she expected Mrs. Briddell to take care of S.F. S.F. had her own bedroom at the Briddells' home, but she slept in bed with her grandmother "when she was little[.]"

Mrs. Briddell testified that S.F. did not come to their house very often, only three to four times per year, because Mrs. Briddell worked on weekends. She only let S.F. come over when she was not working, and she did not usually let S.F. stay home alone with appellant. When asked if she was aware that appellant told a State Trooper that there had been plenty of times that he was alone with S.F., Mrs. Briddell replied, "That's not true then . . . Because I've never left my granddaughter with my husband alone until now."

On the weekend at issue, Mrs. Briddell was called into work after she had picked up S.F. Mrs. Briddell called S.E. and S.F.'s father to have them pick up S.F., but neither responded, so she made the choice to leave S.F. with appellant for the few hours she was at work on Saturday. When she left the house for work, S.F. was having breakfast and playing with her dolls on the living room floor. Appellant was in the backyard getting "his grass cutter together." Appellant's nephew, Alvin Dozier, came up to the house just before Mrs. Briddell departed for work. When Mrs. Briddell returned home from work, S.F. told her that a dental cap had fallen out, but she did not say anything about appellant touching her. That night, S.F. slept in the same bed with Mrs. Briddell and appellant.

A transcript of appellant's interview with a law enforcement officer was admitted in evidence. Appellant stated that he did not have any idea why he was being questioned, but when told there were allegations that he did something to S.F., he said he had "heard something" but just said "nothing because I know I never done nothing[.]" Appellant stated that he and his wife see S.F. on Fridays, Saturdays, and Sundays "every two weeks." There had "been plenty of times" since S.F. was born that appellant cared for her by himself while his wife was at work.

The interviewing officer asked appellant what he thought S.F. had reported. Appellant responded:

> [Appellant]: I don't know. But I know the day when – when my wife got off from work, [S.F.] kept going to use the bathroom, and she told – she came out one time said, pop pop, my butt hurting, right?
>
> [Officer]: Okay.
>
> A. And I said, what's wrong? Because she eats so much, right? And I felt she's stuffed.
>
> Q. Okay.
>
> A. So she must be having a hard time using the bathroom.
>
> Q. Okay.
>
> A. So grandmom came home, she said the same thing. And I said, Lola, I think you need to get her some ex-lax or something, right, because she constipated. And she said, okay. She gave her something, and she went in the bathroom, used the bathroom again. And then she came out and set down there and played a little bit. And I looked down. I said, I told you she might be constipated a little because she's hurting like she's feeling – she's walking, she's hurting I guess from using the bathroom. And I said to myself, I said, she must have had a big turd or something lie –
>
> Q. Okay.

> A. – and she's hurting. I said, that's not good because Buddha[2] eats – she eats all day long she's there.
>
> Q. Okay.
>
> A. And I let her eat anything she want to eat as long as, you know, it's the right thing to eat; hot dog, (inaudible), snacks and everything. And I kept telling her, I said, oh, so she done that, and my wife sit there (inaudible) her as far as get ready for school. Try her outfits on, took pictures of it like I do. And Sunday her grandma – her other grandmom came and got her. And I said, bye, Buddha. We love you. Grandmom got her, was gone. And here about two weeks later or whatever, I supposed to have done something to her.

Appellant denied touching S.F.'s anus and stated that S.F. was making up that allegation.

Two witnesses testified for the defense. Appellant's nephew, Alvin Dozier, testified that he visits appellant's home every day and he sees S.F., whom he refers to as Buddha, "frequently." On Saturday, August 19, 2017, Mr. Dozier visited appellant at his home from 7:15 or 7:30 a.m. until the afternoon. He was with appellant at all times except for a brief time when he walked across the road, about 20-30 yards away, but he could see appellant cutting his lawn even when he was on the other side of the road. Mr. Dozier saw S.F. come to the front door while appellant was cutting the grass. S.F. said that a cap had fallen off her tooth and appellant responded that he would talk to Mrs. Briddell when she got home. Mr. Dozier also observed a blonde woman arrive and speak with appellant.

[2] Evidence was presented at trial that S.F. was sometimes referred to by the nickname "Buddha." (Tr. 5/29/18 at 187-88)

Linda Langville is a private process server who has known appellant for eight years and was friends with him and his wife. On Saturday, August 19, 2017, she was in the area serving papers and stopped by between 1 and 1:15 p.m. to say hello. Ms. Langville saw appellant sitting on his porch and a lawnmower in the yard. She also saw Mr. Dozier standing to the left of some steps. Appellant walked over to Ms. Langville's car and the two spoke for about 15 to 20 minutes. At one point, S.F., whom Ms. Langville referred to as Buddha, stuck her head out the door and said she wanted to get dressed. Appellant told her that her grandmother would get her dressed when she got home. S.F. then went back inside the house.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant challenges the trial court's decision to admit in evidence S.F.'s two recorded interviews with the social workers, Ms. Kelly and Ms. Sample. At a pre-trial hearing on May 16, 2018, the court considered the State's request to admit those interviews in evidence pursuant to Maryland Code Annotated, (2001, 2008 Repl. Vol., 2018 Repl. Vol.) § 11-304 of the Criminal Procedure Article ("CP"). Section 11-304 provides a mechanism for the State to introduce into evidence hearsay statements made by children under the age of 13 who are alleged to have been the victims of child abuse, rape, or sexual offense. Before a statement may be admitted under CP § 11-304, certain prerequisites must

be met, two of which are pertinent to the issue before us. The first is CP § 11-304(c)(4), which provides:

> (c) *Recipients and offerors of statement.* – An out of court statement may be admissible under this section only if the statement was made to and is offered by a person acting lawfully in the course of the person's profession when the statement was made who is:
>
> * * *
>
> (4) a social worker[.]

The second is CP § 11-304(e), which provides:

> (e) *Particularized guarantees of trustworthiness.* – (1) A child victim's out of court statement is admissible under this section only if the statement has particularized guarantees of trustworthiness.
>
> (2) To determine whether the statement has particularized guarantees of trustworthiness under this section, the court shall consider, but is not limited to, the following factors:
>
> (i) the child victim's personal knowledge of the event;
>
> (ii) the certainty that the statement was made;
>
> (iii) any apparent motive to fabricate or exhibit partiality by the child victim, including interest, bias, corruption, or coercion;
>
> (iv) whether the statement was spontaneous or directly responsive to questions;
>
> (v) the timing of the statement;
>
> (vi) whether the child victim's young age makes it unlikely that the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim's expected knowledge and experience;
>
> (vii) the appropriateness of the terminology of the statement to the child victim's age;
>
> (viii) the nature and duration of the abuse or neglect;
>
> (ix) the inner consistency and coherence of the statement;
>
> (x) whether the child victim was suffering pain or distress when making the statement;
>
> (xi) whether extrinsic evidence exists to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim's statement;
>
> (xii) whether the statement was suggested by the use of leading questions; and
>
> (xiii) the credibility of the person testifying about the statement.

At the conclusion of the hearing, the court permitted the State to introduce S.F.'s recorded statements to the social workers on the condition that she testify at trial.

Appellant argues here, as he did below, that both social workers "were effectively working as agents for the law enforcement officers and prosecutors who charged" him. (Appellant's Brief at 12) He also asserts that the trial court erred in finding, under CP § 11-304(e), that there were particularized guarantees of trustworthiness for S.F.'s statements to the social workers. We disagree and explain.

A. Standard of Review

In reviewing the trial court's factual findings under CP § 11-304, we apply the clearly erroneous standard of review. *See In re J.J. and T.S.*, 456 Md. 428, 452 (2017), *cert. denied*, ___ U.S. ___, 139 S.Ct. 310 (2018); Jones *v. State*, 410 Md. 681, 700 (2009) (the clearly erroneous standard of review is applicable to the factual findings required by CP § 11-304). A decision is not clearly erroneous "if the record shows that there is legally sufficient evidence to support it." *In re J.J. and T.S.*, 456 Md. at 452 (internal quotations and citations omitted).

B. The Motions Hearing

At the May 16, 2018 hearing, Detra Kelly testified that on August 26, 2017, she was a licensed social worker and a child protective services worker at the Wicomico County Child Advocacy Center. She received a call from the Maryland State Police stating that S.E. reported that her daughter, S.F., had been touched by Alonza Briddell in a sexual manner. At about 1:30 p.m., Ms. Kelly interviewed S.F. at the Child Advocacy Center.

Trooper Daniels of the Maryland State Police observed the interview, which was audio and visually recorded, from another room. The recorded interview with S.F. was played for the motions judge.

Ms. Kelly described S.F.'s demeanor during the interview as "very open and engaging. . . . she appeared on target developmentally" and she did not have any difficulty communication. There were no signs that S.F. appeared to be in physical distress. During the course of the interview, Ms. Kelly used anatomical drawings to identify body parts. S.F. told Ms. Kelly that her step-grandfather, whom she called Pop Pop had touched her in a sexual manner. S.E. had advised Ms. Kelly that Alonza Briddell had access to S.F. during the time that the allegations were alleged to have occurred.

On cross-examination, Ms. Kelly was questioned about the State Trooper who observed the recorded interview from an observation room and the following occurred:

> [DEFENSE COUNSEL]: And then actually at 1:30 in the afternoon or so or just before 1:30 this Trooper who you think you said you thought had come down from Easton, did you actually have any further conversation with him about the case prior to speaking to [S.F.] and her mom?
>
> [MS. KELLY]: No, just the gist. I mean he called me and he said this is what I was told, and I said, yes, that's what I was told and so we just met up there. And when he got there we did discuss what was told him from the Barrack and that was the same that was given to me. And then, you know, he was already in the observation room waiting. Because we don't usually have law-enforcement because it's uncomfortable, you know, for the families.
>
> Q. On this particular occasion did you have any sort of discussion with the Trooper who had shown up at that CAC about the nature of the information that you were trying to investigate? I mean, did you discuss the claims with that Trooper and did you collaborate to try to figure out what you were going to try to discuss with [S.F.]?

> A. No. I mean I basically told him what was alleged to me and he said the same, but not really what we talked about because I'm the forensic interviewer so he doesn't dictate what I do.

Devan Sample, a social worker in the child protective service unit at the Wicomico Child Advocacy Center, conducted a second interview of S.F. on September 7, 2017, because she had been assigned to handle S.F.'s case. The purpose of the second interview was to allow Ms. Sample to "gather additional information." The interview with Ms. Sample occurred at the Wicomico Child Advocacy Center and was video and audio recorded. The judge reviewed the recording during the course of the hearing.

Ms. Sample testified that during the recorded interview, S.F. "was calm, a little tired, it was late in the evening, but cooperative." There was nothing to indicate that S.F. was in physical distress. S.F. did not have any difficulty communicating. She told Ms. Sample where she lived and who she lived with. During the interview, S.F. disclosed that her step-grandfather, Pop Pop Alonza, had touched her in a sexual manner. From conversations with S.F.'s mother, Ms. Sample was aware that appellant had access to S.F. during the time when the alleged incident occurred. Ms. Sample utilized anatomical drawings that had been used in Ms. Kelly's interview, and S.F. was able to utilize them and state specifically what happened to her.

On cross-examination, Ms. Sample was questioned about her interaction with law enforcement officers and the following colloquy occurred:

> [DEFENSE COUNSEL]: You interact with law enforcement officers on a regular basis –
>
> [MS. SAMPLE]: Yes.

Q. – in the course of your employment?

A. Uh-huh.

Q. Sometimes during the courts of your interviews with children, you interact with law enforcement officers and get questions provided to you by those law enforcement officers?

A. I wouldn't say questions provided, but we work in collaboration with each other for the benefit of the investigation.

* * *

[DEFENSE COUNSEL]: Prior to speaking to [S.F.], did you have direct involvement with law enforcement officers as it relates to this case?

[MS. SAMPLE]: Yes.

Q. Who did you have direct interaction with as it related to this case that you recall?

A. Trooper Brant from the Maryland State Police Department.

Q. And I don't need to know the specifics, but in a general sense, what was the nature of your discussion with Trooper Brant that you had, as it relates to this case prior to speaking to [S.F.]?

A. We were both reassigned the case. He wasn't the initial trooper that got called out on the original call. And I was reassigned the case from the social worker that took the initial call over the weekend on-call. So me and him just got together and . . . .

Q. You indicated that the purpose of the Child Advocacy Center, I think you listed four purposes, to come together, investigate, prosecute, and provide resources to families?

A. Correct.

Q. Is that like a mission statement or where did those things that the Child Advocacy Center does, where does that list of things come from?

A. It's not a mission statement. It's just what, it's what we do.

Q. How did you come to know that that's the purpose of the Child Advocacy Center?

A. Well, with us being a multidisciplinary team, we're all in the same building and we all work together.

Q. But who told you at some point in time that part of your responsibility, to the extent it's your responsibility, is to prosecute cases?

[PROSECUTOR]: Objection.

THE COURT: Basis?

[PROSECUTOR]: That's not what I asked her. I asked her what the CAC was, she described the CAC in its entirety, that's, her role is not specific to law enforcement.

THE COURT: I'm going to allow it.

[DEFENSE COUNSEL]: Has anyone ever told you that part of your responsibility is to prosecute cases?

[MS. SAMPLE]: No.

Q. Do you view that as your responsibility?

A. No.

On redirect examination, Ms. Sample stated that she has interviewed children whose cases have not resulted in a prosecution, and that when an allegation of abuse comes in, her "main focus" is to "assess the safety of [the] child."

During the course of the motions hearing, the judge interviewed S.F. in his chambers. The judge questioned S.F., in part, as follows:

THE COURT: Do you remember talking to somebody about this at some point, a lady or two ladies talking about this?

[S.F.]: Yes.

Q. You do. Do you remember where that was?

A. No.

THE COURT: Was it in Laurel?

A. (Shaking head in the negative. It was (unintelligible)?

Q. It's what?

A. It's close but I don't know where it is.

Q. Was it in Salisbury?

A. Yeah.

Q. Do you know the name of the lady or ladies that you talked to?

A. No.

Q. Okay. Do you remember when it was that you spoke to them?

A. No.

Q. Was it last week?

A. (Shaking head in the negative.)

Q. Was it last year? Was it before Christmas?

A. It was a couple years ago.

Q. A couple years ago, okay. Was there anybody else in the room when you talked with the lady or ladies?

A. No.

Defense counsel raised two objections to the admission of S.F.'s recorded interviews at trial. First, he argued that the social workers were functioning as forensic interviewers or quasi law enforcement officers and that they were "taught how to do their

questioning in substantial part by law-enforcement officers, sometimes at law-enforcement facilities." Defense counsel acknowledged that CP § 11-304(c) permits an out-of-court statement to be admitted "only if the statement was made to and is offered by a person acting lawfully in the course of the person's profession when the statement was made," and that the statute specifically included social workers in the list of professionals who could receive and offer a statement. He argued, however, that this case did not involve social workers "functioning in a traditional social work role." Instead, the social workers were "working as part of a multidisciplinary team at Child Advocacy Center whose purpose is in part the prosecution of crime."

The second objection the defense raised was that the recorded interviews should not have been admitted in evidence because they lacked the particularized guarantees of trustworthiness required under CP § 11-304. On this point, defense counsel specifically identified S.F.'s statement to the judge that her conversations with the ladies who interviewed her occurred a couple of years ago.

The court rejected both of the arguments raised by the defense and permitted the recordings of the social workers' interviews of S.F. to be admitted in evidence at trial. In reaching that decision, the court determined that the question of whether the social workers were functioning as forensic interviewers or in a quasi law enforcement manner "should be raised with the General Assembly of Maryland," and that the court would be governed by the language of CP § 11-304. With respect to the particularized guarantees of trustworthiness, the court specifically addressed all 13 of the factors set forth in CP § 11-304(e)(2) and determined that "there are particular guarantees of trustworthiness as they

relate to the statement made on the 26th of August, 2017 to Ms. Kelly and on September 7th of 2017 to Ms. Sample. They will be admissible, of course, with the condition that the child testifies."

C. Role of Social Workers

Appellant argues here, as he did below, that both social workers "were effectively working as agents for the law enforcement officers and prosecutors who charged" him. This issue was addressed in *Lawson v. State*, 389 Md. 570 (2005). In that case, Lawson argued that the social worker who interviewed a minor who was allegedly the victim of child sexual abuse by him, was not acting in the course of her profession, but as an agent of the State who was brought into the case for the purpose of evidence collection and not for the purpose of treatment. The Court of Appeals disagreed and concluded that "a social worker is acting within the course of his or her profession when investigating alleged child abuse incidents[.]" *Lawson*, 389 Md. at 584. This is true "throughout the process even when they are informed of the abuse by police officers or themselves report the abuse to the police." *Id.* at 585.

Similarly, in this case, Ms. Kelly and Ms. Sample acted in the normal course of their jobs as social workers when they interviewed S.F. Both interviews were conducted separately with no police officers, prosecutors, or any other individuals present in the room where the interviews occurred. Ms. Sample denied that any law enforcement officer supplied questions for her to ask S.F. and Ms. Kelly stated that no officer dictated what she did during her interview of the child. As there was no evidence that any law enforcement officer directed the course of the interviews, the circuit court did not err in concluding that

the recorded interviews conducted by the two social workers were admissible under CP § 11-304.

D. Particularized Guarantees of Trustworthiness

Appellant next contends that the recorded interviews did not have particularized guarantees of trustworthiness. He does not challenge any of the court's factual findings with regard to the 13 factors set forth in CP § 11-304(e)(2), but argues that the particularized guarantees of trustworthiness were not established because of S.F.'s statement that the interviews with the social workers occurred "a couple years ago," when, in fact, the hearing took place about 8 months after the last interview. We disagree.

The motions court clearly rejected appellant's argument and concluded that S.F.'s mistaken belief was outweighed by the statutory factors that favored admission of the recorded interviews. The court specifically addressed the issue and determined that S.F.'s mistaken belief was "an appropriate question for cross-examination." On this record, we hold that the circuit court did not err in admitting S.F.'s statements.

II.

Appellant contends that the trial court abused its discretion by restricting defense counsel's cross-examination of Lola Briddell about an angry encounter between her and S.E. that occurred outside the courthouse in S.F.'s presence. On cross-examination, S.F. testified about the angry encounter as follows:

> [DEFENSE COUNSEL]: [B]efore today, have you seen anyone, specifically, your mom get angry at Mom-Mom? Have you seen your mom get angry at Mom-Mom the last time you came to the courthouse?
>
> [S.F.]: Yes.

[PROSECUTOR]: Objection.

THE COURT: Overruled.

[UNIDENTIFIED VOICE]: Do you remember that?

[S.F.]: Uh-huh.

THE COURT: Okay.

[DEFENSE COUNSEL]: You physically saw your mom yelling at Mom-Mom saying that she was defending a rapist? Do you remember your mom getting angry with Mom-Mom and saying that?

[S.F.]: Yes.

[DEFENSE COUNSEL]: That happened outside of the courthouse?

[S.F.]: Yes.

S.F.'s mother was also questioned about the incident. She acknowledged that she was "upset" because she had left her daughter in Mrs. Briddell's care, but she denied having an angry outburst with Mrs. Briddell at the courthouse in front of S.F.

On cross-examination, defense counsel attempted to question Mrs. Briddell about the encounter and the following occurred:

[DEFENSE COUNSEL]: Ms. Briddell –

[MRS. BRIDDELL]: Uh-huh.

Q. – the last time that you came to the courthouse –

A. Uh-huh.

Q. – related to this case, did you have a negative interaction with [S.F.'s] mom?

A. Yes.

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: May I have permission to approach, Your Honor?

THE COURT: Yes.

(Whereupon, counsel approached the bench, and the following ensued.)

[DEFENSE COUNSEL]: Your Honor, my belief is that the conversation happened in the presence of [S.F.], and that, specifically, [S.F.'s] mother called Ms. Briddell the N word and accused her of taking the side of a rapist as opposed to her granddaughter. The reason I think it's relevant is that given that it occurred in the presence of the alleged victim, the State's theory of the case that was there isn't a motive to maintain this fabricated story is called into question by the fact that, obviously, the mother is saying things of a very aggressive nature regarding the veracity of the case in the presence of the victim, an impressionable, young victim, the age of six, and so I think it's relevant for that purpose to show the state of mind of the listener, in this case, [S.F.].

[PROSECUTOR]: I think those are all events that occurred after the fact and they have no bearing –

THE COURT: I agree. I'm going to sustain the objection.

Appellant argues that the trial court abused its discretion in restricting his cross-examination of Mrs. Briddell because that decision deprived him of a full opportunity to demonstrate that S.F. might have been affected by her mother's strong words and demonstrated hostility toward Mrs. Briddell. We disagree and explain.

Maryland Rule 5-616(b)(3) provides that extrinsic evidence of a witness's motive to testify falsely "may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it." Such evidence is only admissible if it is relevant. Md. Rule 5-402. Even if it is relevant, the evidence "may be excluded 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 undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. The decision to admit such testimony lies in the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Santiago v. State*, 458 Md. 140, 161 (2018); *Harmony v. State*, 88 Md. App. 306, 321-22 (1991).

In support of his argument, appellant directs our attention to *Johnson v. State*, 332 Md. 456 (1993), *Churchfield v. State*, 137 Md. App. 668 (2001), and *State v. DeLawder*, 28 Md. App. 212 (1975), but those cases are inapposite because they all involved motivations to fabricate allegations that pre-existed the victim's initial report of abuse. *See e.g. Johnson*, 332 Md. at 465 (appellant sought to show that victim's rape allegation was "a vindictive response to not receiving drugs for the sexual relations she engaged in with the petitioner"); *Churchfield*, 137 Md. App. at 676-77 (appellant sought to show that the victim, who was his daughter, fabricated allegations of abuse to "rid herself of her meddling father" because of a conflict over her sexual activity with others); *DeLawder*, 28 Md. App. at 220 (appellant sought to prove that the alleged victim fabricated allegations of rape because she had sexual intercourse with others, was pregnant, and was afraid to tell her mother).

In the instant case, S.E.'s confrontation with Mrs. Briddell occurred after S.F. had reported the abuse and, as a result, it did not affect the veracity of S.F.'s initial report. Moreover, the issue involved a confrontation between S.F.'s mother and Mrs. Briddell about Mrs. Briddell's decision to take her husband's side. There was no evidence that S.F.

was angry with her grandmother or that she held any animus that might show a motive to lie. As a result, the trial court did not err in sustaining the objection because the evidence was not relevant.

Even if the excluded evidence had some bearing on S.F.'s fabrication of her report of abuse, the trial court did not abuse its discretion in excluding it. Maryland Rule 5-403 provides that even if relevant, evidence "may be excluded if its probative value is substantially outweighed by the danger of . . . needless presentation of cumulative evidence." Prior to Mrs. Briddell's testimony, S.F. testified that she saw her mother yell and get angry at her grandmother and heard her mother accuse Mrs. Briddell of defending a rapist. Because the evidence sought from Mrs. Briddell was cumulative, the trial court did not abuse its discretion in excluding it.

III.

Appellant argues that the evidence was insufficient to sustain his conviction for second-degree assault. He makes 3 specific contentions: (1) that the evidence failed to establish that S.F. did not consent to the insertion of his finger into her anus; (2) that according to the State's evidence, the abuse was physically impossible; and, (3) there was insufficient evidence to establish that he was a family member or that he had care or custody of S.F. We disagree with each of these contentions.

A. Standard of Review

The standard for determining the legal sufficiency of evidence is 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.'"

Donati v. State, 215 Md. App. 686, 718 (2014)(quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard of review "applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). Circumstantial evidence can support a conviction on its own if there is enough to support a finding of guilt:

> Circumstantial evidence is sufficient to sustain a conviction, but not if that evidence amounts only to strong suspicion or mere probability. Although circumstantial evidence alone is sufficient to sustain a conviction, the inferences made from circumstantial evidence must rest upon more than mere speculation or conjecture.

Corbin v. State, 428 Md. 488, 514 (2012) (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

"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). "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted). "Our role is not to retry the case: [b]ecause the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Nicholson v. State*, 239 Md. App. 228, 252 (2018), *cert. denied*,

462 Md. 576 (2019) (quotations omitted). Thus, the limited question before us "is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted).

B. Lack of Consent

The battery variety of second-degree assault requires proof that the defendant caused offensive physical contact with or physical harm to the victim, that the contact was the result of the defendant's intentional or reckless act, and that the contact was not consented to or legally justified. *Hickman v. State*, 193 Md. App. 238, 256-57 (2010). With regard to the lack of consent, S.F. testified that she was asleep when appellant touched the inside of her butt with his finger. On direct examination. S.F. was asked if she told appellant to stop. In response, she shook her head back and forth but stated that she did not remember. In her recorded interview with Ms. Sample, however, S.F. said that she told appellant to "stop it." In addition, S.F. testified at trial that after the occurrence she did not feel safe and, specifically, that she did not feel safe with appellant. This evidence was sufficient to prove that S.F. did not consent to appellant's touching.

C. Physical Impossibility

Appellant argues that the event described by S.F. was physically impossible. In support of appellant's motion for judgment of acquittal, defense counsel argued:

> There's a claim of Mr. Briddell alleging to be somehow behind [S.F.] and at – either is taking the person's pants down and inserting a finger inside of the person or is not taking the person's pants down at all and is rubbing upon the person.

> Under those circumstances, there is insufficient evidence to support from a factual standpoint the claims that are in counts 2, 3 and 4.

At trial, S.F. testified that her clothes were on when appellant's finger was inserted in her butt. In her pre-trial statement to Ms. Kelly, S.F. stated that she was wearing night clothes, that appellant "took my pants off," that her underwear was up, and that appellant put his hand up in them. The jury was free to credit S.F.'s statements to Ms. Kelly or to infer from her trial testimony that appellant reached under her clothing to perform the act. Either way, there was evidence from which the jury could conclude that the act was physically possible.

D. Appellant's Status as Family Member and his Care or Custody of S.F.

Appellant challenges his convictions for sexual abuse of a minor in his care or custody and sexual abuse of a minor family member on the ground that there was insufficient proof that he had care or custody of S.F. and that he was a family member. This contention is without merit.

Section 3-602 of the Criminal Law Article provides:

> (b) *Prohibited.* – (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.

Md. Code (2012 Repl. Vol.), § 3-602(b) of the Criminal Law Article ("CL").

The term "family member" is defined as "a relative of a minor by blood, adoption, or marriage." CL §§ 3-602(a)(2) and 3-601(a)(3).

Mrs. Briddell testified that appellant is her husband and that they had been married "[g]oing on, I'd say, eight years." S.E. similarly testified that appellant was married to Mrs.

Briddell and that he was S.F.'s step-grandfather. In addition, in his statement to police, appellant identified S.F. as his "wife's son's daughter." Under the plain language of the statute, therefore, appellant is S.F.'s "family member."

Appellant also contends that the evidence was insufficient to prove he had care or custody of S.F. We need not reach that issue because, even assuming, *arguendo*, that there was no evidence to establish that appellant had "care or custody" of S.F., there was evidence from which a jury could find that he had temporary responsibility for the supervision of S.F. In *Wicomico County Dep't of Soc. Svcs. v. B.A.*, 449 Md. 122 (2016), the Court of Appeals summarized precedent defining and distinguishing between "temporary care or custody" of a minor and "responsibility for supervision" of a minor, as follows:

> This Court has previously said that "temporary care or custody" is equivalent to "*in loco parentis*," a relatively restrictive classification that "arises only when one is willing to assume all the obligations and to receive all the benefits associated with one standing as a natural parent to a child." *Pope v. State*, 284 Md. 309, 323, 396 A.2d. 1054 (1979)(quoting *Fuller v. Fuller*, 247 A.2d 767 (D.C. 1968)). However, "responsibility for . . . supervision" is broader. As the Court in *Pope* observed:
>
> > "Responsibility" in its common and generally accepted meaning denotes "accountability," and "supervision" emphasizes broad authority to oversee with the powers of direction and decision. . . . Absent a court order or award by some appropriate proceeding pursuant to statutory authority, we think it to be self-evident that responsibility for supervision of a minor child may be obtained only upon the mutual consent, expressed or implied, by the one legally charged with the care of the child and by the one assuming the responsibility.
>
> 284 Md. at 323, 396 A.2d 1054. Thus, the Court said, a babysitter temporarily has responsibility for the supervision of a child, and so does a school teacher when the child is at school. *Id.* at 324, 396 A.2d 1054. Having begun, such responsibility ends as follows:
>
> > [O]nce responsibility for the supervision of a minor child has been placed in a third person, it may be terminated unilaterally by

> a parent by resuming responsibility, expressly or by conduct. The consent of the third party in such circumstances is not required; he may not prevent return of responsibility to the parent. But, of course, the third person in whom responsibility has been placed is not free to relinquish that responsibility without the knowledge of the parent. For example, a sitter may not simply walk away in the absence of the parents and leave the children to their own devices.
>
> *Id.*

Wicomico County Dep't of Soc. Svcs., 449 Md. at 134-35.

Whether a person has responsibility for the supervision of a minor child in contemplation of the statute is a question of fact for the jury. *Anderson v. State*, 372 Md. 285, 292 (2002); *Newman v. State*, 65 Md. App. 85, 99 (1985). The evidence presented at trial was that S.F. regularly visited the Briddells and had her own bedroom in their home. S.E. testified that S.F. visited the Briddells about once a month while appellant told police that the visits occurred about every two weeks. Appellant also told police that there had been "plenty of times" since [S.F.] was born when he "kept" her by himself. S.F.'s mother testified that she expected Mrs. Briddell to take care of S.F. and be at home when she visited, but S.E. also allowed S.F. to stay at the Briddells' home over weekends, even though Mrs. Briddell had a job that required her to work on weekends. From the evidence presented, the jury could reasonably infer that S.E. impliedly consented to appellant supervising S.F. and that appellant assumed responsibility for supervising the child.

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