

Circuit Court for Caroline County
Case No: C-05-CR-24-000274

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2354

September Term, 2024

THOMAS EUGENE PRITCHETT, IV

v.

STATE OF MARYLAND

Wells, C.J.,
Albright,
Lazerow, Alan C.,
(Specially Assigned),
JJ.

Opinion by Wells, C.J.

Filed: July 14, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After a jury trial in the Circuit Court for Caroline County, Thomas Eugene Pritchett, IV, appellant, was found guilty of distribution of obscene material, soliciting assignation, and violation of a protective order. The court sentenced Pritchett to one year incarceration for violation of a protective order and imposed a one-year suspended sentence for distribution of obscene material and a consecutive one-year suspended sentence for soliciting assignation. This timely appeal followed.

Pritchett presents the following questions for our consideration, which we have slightly rephrased:

- I. Whether the evidence sustaining the conviction for distributing obscene matter was legally sufficient; and
- II. Whether the evidence sustaining the conviction for soliciting assignation was legally sufficient.

For the reasons set forth below, we answer both questions in the negative, and thus reverse the judgments of the circuit court on count one, distribution of obscene matter, and count two, soliciting assignation.

FACTUAL AND PROCEDURAL BACKGROUND

A. The State’s Case

The State charged Pritchett with distribution of obscene material (count one), soliciting assignation (count two), and violation of a protective order (count three)—all of which allegedly occurred on August 8, 2024, at 9:12 p.m., at the corner of Fountain Avenue and 5th Street in Denton, Maryland. The State presented testimony from two witnesses—Cody Taylor and his sister, the alleged victim, whom we shall refer to as C.

On August 8, 2024, Taylor was walking to work at the Denton Walmart to begin a 10 p.m. shift when he saw Pritchett’s car. Pritchett is Taylor’s sister’s ex-husband, and Taylor had known him for more than a decade. According to Taylor, Pritchett stuck his head out of the vehicle and yelled, “hey faggot, I made some business cards for your sister. Show her one.” Pritchett then threw a business card out of the window, and Taylor picked it up. One side of the business card had an image of C’s face printed on it as well as the words “[C.’s] Escort service let me make your wild fantasy come true[,]” and C.’s telephone number and email address. An image of a person who was clothed and lying face down on what appeared to be a bed was printed on the other side of the card. Printed over that image were the words, “Great rates, one hour \$75.00 whole night, \$350, the girlfriend experience \$750 weekly[.]” Taylor showed the business card to his sister.

C testified that she and Pritchett married in 2010 and divorced in 2014. After the divorce, they had an “on again, off again” relationship and had a child together. In August 2023, C obtained a protective order against Pritchett. Thereafter, she filed a complaint for custody and a petition for child support.

C further testified that on the morning of August 9, 2024, when she got home from work, her brother gave her the business card. C believed that Pritchett had also distributed the business cards to her mother’s house in Hillsboro because her mother and sister “found them” there, and C’s mother sent her a picture of one of the cards.

The parties entered into the following stipulation that was read aloud to the jury:

The parties have agreed on August 17th, 2023, a Final Protective Order was issued on behalf of [C], which provided in part that Thomas

Pritchett shall not contact or attempt to contact [C], to include by in person, by telephone, in writing or by any other means. Final Protective Order was served on Mr. Pritchett in open court on the same day and the Final Protective Order remained in effect at that time until August 14th, 2024. Thomas Pritchett consented to the entry of the Protective Order. That means the Court was not required to determine whether the allegations were true in the Petition before issuing the Order.

B. Motion for Judgment of Acquittal

Pritchett moved for judgment of acquittal on all counts after the State presented its case. With respect to count one (distributing obscene matter), Pritchett’s counsel argued the evidence was legally insufficient because the business card did not contain obscene matter. Counsel further argued the text on the card did not describe any sexual conduct in a patently offensive way. As for the images, one side merely showed a picture of C’s face, and the other side showed a person, presumably C, wearing a shirt and lying face down on a bed. The defense argued that those images were also not obscene as they did not depict a sexual act in a patently offensive way and the card was for escort services, which “does not mean prostitution.” As a result, defense counsel argued, there was nothing on the card that, under contemporary community standards, was patently offensive sexual conduct.

With respect to count two (soliciting assignation) Pritchett argued the business card did not solicit prostitution or assignation, but only escort services, and there was no evidence the card was distributed for the purpose of prostitution. Furthermore, the evidence showed only that Pritchett threw the card at Taylor and asked him to show it to C. There was no evidence from which the factfinder could infer Pritchett was trying to solicit Taylor to set up an appointment for prostitution with his own sister.

The court denied the motion for judgment of acquittal, stating in part that with respect to the charge of solicitation of assignation, in addition to C.’s brother, there was also testimony that the business card was “distributed at [C.’s] mother’s lawn.” Defense counsel clarified that Pritchett was charged only with conduct that occurred on August 8, 2024, at the location in Denton, when Taylor encountered Pritchett.

C. Pritchett’s Defense

At trial, Pritchett testified on his behalf and presented two alibi witnesses—his mother and his girlfriend, Stacie Dawe¹—to testify on his behalf. Pritchett had lived at his mother’s home in Delmar, Delaware since August 2023 when he separated from C. According to his mother, in August 2024, Pritchett’s car was in his mother’s driveway because there was something wrong with it, and he was using one of his mother’s vehicles.

According to Pritchett and Dawe, on August 8, 2024, Pritchett drove Dawe to Chestertown, Maryland for a doctor’s appointment. After the appointment, they went to a few stores, drove to Denton, went to a post office, went to Pritchett’s friend Mark’s home, left Mark’s house and went to a Walmart, and then returned to Mark’s house. They left Mark’s house at about 5:30 p.m. and then drove to Pritchett’s mother’s home.

Pritchett’s mother testified that she picked up a half bushel of crabs at about 6 p.m. and then returned to her house, and Pritchett and Dawe were there when she arrived. Pritchett took a shower and Dawe started eating crabs. Pritchett’s mother’s friend, Chris,

¹ Dawe acknowledged she was previously convicted of shoplifting on three occasions.

then joined the three for dinner. After eating, Pritchett and Dawe went to a bedroom where they watched a movie and then went to sleep. According to Dawe, Pritchett never left his mother’s house by himself, and that in order to get out of bed, he would have had to crawl over her. Pritchett and his mother also testified that he did not leave the house that night.

At the close of the evidence, Pritchett renewed his motion for judgment of acquittal, adopting all of the arguments previously made, which the court denied.

STANDARD OF REVIEW

The standard for reviewing the 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.” *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). The question is not whether the reviewing court would have believed the evidence at trial established guilt beyond a reasonable doubt; rather, the only concern of the reviewing court is “whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *State v. McGagh*, 472 Md. 168, 194 (2021) (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)).

In conducting a review of a claim of insufficient evidence, “we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Smith*, 415 Md. at 185 (citations omitted). We instead review the evidence and “all reasonable inferences

deducible from the evidence in a light most favorable to the State.” *Id.* at 185–86 (citing *Allen v. State*, 402 Md. 59, 77 (2007)).

DISCUSSION

I.

Pritchett contends the evidence is legally insufficient to sustain the conviction for distribution of obscene matter under § 11-202(a)(3) of the Criminal Law Article (“CR”) of the Maryland Code, which provides that “[a] person may not: . . . (3) in the State prepare, publish, print, exhibit, distribute, or offer to distribute any obscene matter[.]” The State agrees and so do we.

The term “obscene” is not defined in CR § 11-202 but is defined by case law. *Purohit v. State*, 99 Md. App. 566, 576 (1994) (addressing predecessor statute). In *Miller v. California*, 413 U.S. 15 (1973),² the United States Supreme Court established a three-part test for obscene matter, stating:

State statutes designed to regulate obscene materials must be carefully limited As a result, we now confine the permissible scope of such regulations to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.

The basic guidelines for the trier of fact must be: (a) whether “the average person, applying contemporary community standards” would find

² *Miller* was decided with four other federal obscenity cases: *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, *reh. denied*, 414 U.S. 881 (1973); *Kaplan v. California*, 413 U.S. 115, *reh. denied*, 414 U.S. 883 (1973); *United States v. 12 200-ft. Reels of Super 8mm Film*, 413 U.S. 123 (1973); and *United States v. Orito*, 413 U.S. 139 (1973).

that the work, taken as a whole, appeals to the prurient interest, . . . (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller, 413 U.S. at 23–24 (citations and footnote omitted).

The Supreme Court provided the following as “plain examples of what a state statute could define for regulation”: “(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated[,]” and “(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.” *Id.* at 25. According to the Court, under its holding in *Miller*, “no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive ‘hard core’ sexual conduct specifically defined by the regulating state law, as written or construed.” *Id.* at 27.

In *Village Books, Inc. v. State*, 22 Md. App. 274 (1974), we addressed, among other things, the function of this Court in reviewing a jury’s finding that material is obscene. We recognized, as the United States Supreme Court did in *Jenkins v. Georgia*, 418 U.S. 153, 160 (1974), that “questions of what appeals to the ‘prurient interest’ and what is ‘patently offensive’ under the *Miller* obscenity test are essentially questions of fact.” *Village Books, Inc.*, 22 Md. App. at 282 (quoting *Miller*, 413 U.S. at 30). Nevertheless, “it would be a serious misreading of *Miller* to conclude that juries have unbridled discretion in determining what is patently offensive.” *Village Books, Inc.*, 22 Md. App. at 282 (cleaned up). This Court detailed:

Mr. Justice Brennan summed it up neatly in his opinion concurring in the result in *Jenkins*:

‘After the Court’s decision today, there can be no doubt that *Miller* requires appellate courts – including this Court – to review independently the constitutional fact of obscenity. Moreover, the Court’s task is not limited to reviewing a jury finding under part (c) of the *Miller* test that ‘the work, taken as a whole, lack(ed) serious literary, artistic, political, or scientific value.’ *Miller* also requires independent review of a jury’s determination under part (b) of the *Miller* test that ‘the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.’

Village Books, Inc., 22 Md. App. at 283 (quoting *Jenkins*, 418 U.S. at 163–164).

In this case, the business card advertising the fictitious escort service did not constitute obscene matter. It did not depict any nudity, semi-nudity, genitalia, sex act, or description of any sex act. Nor did it depict or describe, in a patently offensive way, any sexual conduct. It certainly was devoid of “hard core” sexual conduct akin to the examples set forth in *Miller*. For that reason, the conviction for count one, distribution of obscene material, must be reversed.

II.

Next, Pritchett contends the evidence is legally insufficient to sustain his conviction for soliciting assignation under CR § 11-306(a), which provides that “[a] person may not knowingly procure or solicit or offer to procure or solicit prostitution or assignation.” Again, the State agrees and so do we.

In support of his contention, Pritchett directs our attention to the statutory history of CR § 11-306 and argues the statute was enacted “to target *bona fide* instances of

prostitution or solicitation of prostitution within the broader context of addressing the scourge of human trafficking[.]” While that may be true, a review of the legislative history of the statute is not necessary to resolve the issue before us. We review the interpretation and application of statutory law without deference. *Bromberg v. State*, 265 Md. App. 528, 539 (2025) (citing *State v. Krikstand*, 483 Md. 43, 64 (2023)). We also bear in mind that penal statutes are to be strictly construed. *Howell v. State*, 278 Md. 389, 392 (1976).

Under the well-established general principles of statutory interpretation, our first step in ascertaining legislative intent is to “examine the plain language of the statute[.]” *Dep’t of Health and Mental Hygiene v. Kelly*, 397 Md. 399, 419 (2007). “[I]f the language is unambiguous when construed according to its ordinary meaning, then we will give effect to the statute as written.” *Id.* (quotation marks and citation omitted). The terms pertinent to the case at hand are clearly and unambiguously defined. The term “solicit” is defined as “urging, advising, inducing, encouraging, requesting, or commanding another.” CR § 11-301(g). “Assignment” is defined as “the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.” CR § 11-301(b). Lastly, the word “prostitution” is defined as “the performance of a sexual act, sexual contact, or vaginal intercourse for hire.” CR § 11-301(g).

As noted, Pritchett was charged with knowingly soliciting assignment at the corner of Fountain Avenue and Fifth Street in the town of Denton. The evidence admitted at trial showed Pritchett distributed one business card to Taylor on the night of August 8, 2024, while Taylor was walking to his job at the Denton Walmart for a shift that started at 10

p.m. There was also evidence that, at some unspecified time and date, C’s mother and sister found at least one of the business cards at C’s mother’s home in Hillsboro. Based on the time, date, and location set forth in the charging document, it is clear the charge of soliciting assignation in this case was limited to the distribution of the card to Taylor.

C testified that she did not establish any type of business to offer the services listed on the business card and did not give permission to use either of the photographs of her that appeared on it. The language on the card advertised an escort service, not specifically prostitution. Taylor testified that when Pritchett threw the card at him, he said to show it to C. There was no evidence from which the jury could infer that Pritchett distributed the business card to Taylor to urge, advise, induce, encourage, request, or command him to make an appointment or engagement for prostitution with his own sister, C. Notably, in its closing, the State argued that when Pritchett threw the business card at Taylor, he was attempting to contact C in violation of the protective order. Although the State’s evidence established that Pritchett distributed to Taylor a business card advertising an escort service for the purpose of communicating with and harassing C, that evidence was not legally sufficient to sustain a conviction for soliciting assignation under CR § 11-306(a). For that reason, we also reverse on this count.

**JUDGMENTS OF THE CIRCUIT COURT FOR
CAROLINE COUNTY REVERSED AS TO
COUNT 1, DISTRIBUTION OF OBSCENE
MATTER, AND COUNT 2, SOLICITING
ASSIGNATION; JUDGMENTS AFFIRMED IN
ALL OTHER RESPECTS; CAROLINE COUNTY
TO PAY THE COSTS.**