

Circuit Court for Wicomico County

Case No. C-22-CR-18-000287

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2622

September Term, 2018

ROBERT LEE MOORE

v.

STATE OF MARYLAND

Friedman,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 9, 2020

*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.

A jury in the Circuit Court for Wicomico County convicted Robert Lee Moore of sexual abuse of a minor by a household member, two counts of third-degree sex offense, and second-degree assault. The trial court sentenced Moore to 35 years' incarceration—25 years' incarceration for sexual abuse of a minor and 5 years' incarceration for each count of third-degree sex offense.

On appeal, Moore asserts that the evidence was insufficient to support a finding that he and the victim were members of the same “household,” and therefore, his conviction for sexual abuse of a minor must be reversed. For the following reasons, we affirm.

FACTS

At trial, the State presented evidence that Moore committed two acts of third-degree sexual offense upon the minor victim, A.T., at a house where they both lived. The two-story, four-bedroom house was owned by Leslie Cornelius Warner. Moore, Warner's friend lived in the house, as did A.T.'s uncle.

A.T. and her mother, C.T., moved into Warner's house because they “didn't really have a house,” so they “had to move from place to place.” C.T. met Warner through her brother and they were “romantically involved” at some point. She and Warner had an “understanding” that she and A.T. would move into his house to save money. C.T. put her furniture in storage and moved their other belongings into the house.

C.T. shared a bedroom, located on the first-floor, with Warner, who was “hardly ever there.” A.T. slept on a couch in a den on the second floor, across the hall from her

uncle's bedroom. Moore occupied a bedroom on the first-floor. The kitchen, living room, first-floor bathroom, and laundry room were common areas.

At first, A.T. and C.T. had little interaction with Moore, who stayed primarily in his room. When A.T.'s uncle moved out of the house shortly after C.T. and A.T. moved in, Moore began to come out of his room more often. A.T. testified that Moore looked at her "in a weird way," and touched her "in inappropriate places," including her "bottom," when she walked by him. On one occasion, Moore approached A.T. from behind and pressed the front of his body against the back of her body. A.T. stated that this behavior occurred "fairly often," and was difficult to avoid, explaining: "When I walk in the kitchen he'll be there. When I have friends over he'll be in another room looking at me."

C.T. was uncomfortable with the way Moore looked at A.T., which C.T. described as "a lion getting ready to attack somebody." She described how Moore "would sit at the door [of his room], peeping out the door[.]" She told A.T. to stay away from Moore and C.T. started sleeping in the upstairs den with A.T. C.T. testified that one night, at about 2:00 a.m., Moore came "creeping up the steps," and entered the den but "scooted" off like "someone was after him" after realizing C.T. was on the couch with A.T. After this, C.T. started packing their things and made plans to move out of the house that week. The next night, C.T. fell asleep in the living room and Moore went into Warner's bedroom on the first-floor where A.T. was sleeping and sexually assaulted her.

At the close of the State's case, defense counsel moved for judgment of acquittal. On the charge of sexual abuse of a minor, defense counsel asserted that the evidence was

not sufficient to establish that Moore was A.T.’s “household member.” After considering the statutory definition of “household member,” the court denied the motion.¹

DISCUSSION

Moore was convicted of sexual abuse of a minor under § 3-602(b)(2) of the Criminal Law Article of the Maryland Code, which provides that “[a] household member or family member may not cause sexual abuse to a minor.” MD. CODE, CRIMINAL LAW (“CR”) § 3-602(b)(2).² “Household member” is defined, for purposes of CR § 3-602(b)(2), as “a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.” CR § 3-601(a)(4). The charging document alleged that Moore was a household member of A.T.

Moore does not dispute that he lived in the same house as A.T. but asserts that he and A.T. were “not members of the same household” because they “had no significant social or familial ties to one another”—they were “essentially strangers who shared an address and occupied the same physical structure.” The State asserts that Moore falls within

¹ The State contends that Moore failed to preserve his right to appellate review because the defense counsel’s theory as to why the evidence was insufficient to establish that he was a household member is different than the theory asserted on appeal. The circuit court, however, was asked to rule on whether the State had met its burden of production on the element of “household member” and as such, we conclude that the issue was sufficiently preserved for our review. *See Redkovsky v. State*, 240 Md. App. 252, 261 (2019) (“[A] motion for judgment of acquittal may be sufficient to preserve an issue where the acquittal argument generally includes the issue raised on appeal.”).

² Under CR § 3-602(a)(4)(ii), “sexual abuse” includes a sexual offense in any degree.

the definition of “household member” due to his “uncontested status as the victim’s housemate.” See *Wright v. State*, 349 Md. 334 (1998). We agree with the State.

We review a criminal conviction to 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.” *Roes v. State*, 236 Md. App. 569, 582 (2018) (quoting *Grimm v. State*, 447 Md. 482, 494-95 (2016)). Where, as in this case, “our review of the sufficiency of the evidence involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the [trial] court’s conclusions are legally correct under a *de novo* standard of review.” *In re: J.H.*, 245 Md. App. 605, 623 (2020).

In *Wright v. State*, the Court of Appeals discussed the meaning of “household member” within a similar factual scenario. 349 Md. 334 (1998). In *Wright*, the defendant was living with the minor victim’s adult sister and sexually assaulted the victim while she was staying with her sister for part of the summer. *Id.* at 337. On appeal, the defendant argued that while he was a household member of the sister’s home, he was not a household member of the victim’s home, which he argued was with the victim’s mother and step-father because she was only staying with the sister for part of the summer. *Id.* at 355.

The Court observed that the wording of the statute, which defines household member as one who lives with or is a regular presence in “*a* home of a child,” (rather than “*the* home of child”), “indicates a legislative recognition that, for purposes of the child abuse statute, a child may have more than one home.” *Id.* at 355 (emphasis added). The

Court noted, that, within the context of child abuse law, the definitions of words such as “home,” “resident,” and “household” must be flexible, as children are “frequently part of several homes and households[,]” and that, “[w]here their ‘home’ is at any given time may well depend on what is at stake in ascertaining where their home is.” *Id.* at 355-56. The Court held that, while the victim’s permanent home was with her mother, the victim was living with her sister at the time of the criminal activity, reasoning that:

[the victim] . . . had been at [her sister’s] house for about two weeks and was intending to stay another two weeks, it is a fair inference that at least some part of her clothes and other personal belongings were also at [her sister’s] house; that is where she slept, bathed, and ate; that is where her friend, [T.], was staying with her. That was the place where, at the time, she formed part of [her sister’s] household, a household of which Wright was a member.

Id. at 356-57. Applying the same rationale to the essentially identical facts in this case, the evidence was sufficient to support a finding that A.T. lived in the house, that it was her home, and that Moore, who lived in the house with A.T., was a household member.

Moore attempts to distinguish *Wright* by claiming that the defendant in *Wright* was a “household member” by virtue of his relationship with the victim’s sister. Moore suggests that CR § 3-601(a)(4) implicitly requires “some kind of social or familial bond” between the victim and the defendant, or at least should be read that way to avoid “absurd results.” We do not agree with his explanation of the rationale in *Wright*, nor do we agree with his reading of the statutory definition of “household member.”

“The cardinal rule of statutory interpretation is to ascertain and effectuate the General Assembly’s intent.” *Kranz v. State*, 459 Md. 456, 474 (2018). “When the statutory

language is clear, we need not look beyond [it] to determine the General Assembly’s intent” and we “will give effect to the statute as it is written.” *Rogers v. State*, 468 Md. 1, 14 (2020) “In every case, the statute must be given reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.” *Noble v. State*, 238 Md. App. 153, 162 (2018).

Starting with the plain language of CR § 3-601(a)(4), “household member” is defined as a person who either (1) lives with a minor, or (2) is a regular presence in a home of a minor. We find this language to be clear and unambiguous. The phrase “lives with a minor,” construed according to the common and everyday meaning of those words, means that the person resides in the same dwelling unit as the minor. The phrase, “or is a regular presence in the home of a minor,” means that the person does not live in the same dwelling unit with the minor but is present there on a regular basis.

Next, we see that the plain language of CR § 3-601(a)(4) is consistent with the purpose of the statute. Prior to 1991, the predecessor statute to CR §§ 3-601 and 3-602, Article 27, §35A, applied only to “a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a child.” In 1991, the legislature amended §35A to add household and family members to the class of persons who may be found guilty of child abuse.³ 1991 Md. Laws, ch. 184 (HB 402). The Court of Appeals has commented on the intent of the amendment, noting that:

³ Art. 27, § 35A was repealed and replaced by CR §§ 3-601 and 3-602. The definition of “household member” in § 35A, “a person who lives with or is a regular

[t]he clear purpose of the addition was to extend the reach of the statute for the greater protection of children, to declare as criminal violations acts of abuse committed against children by a class of persons not then subject to the law. The Legislature obviously recognized that there were people other than parents, custodians, and persons directly charged with the care and supervision of a child who were in a position to commit abuse within the child’s home setting, where, because of the status of both the abuser and the child in that setting, the child might be helpless against the predation.

Wright, 349 Md. at 356. The plain language of CR §§ 3-602(b)(2) and 3-601(a)(4), viewed in the context of the statutory scheme, reflects the Legislature’s concern that a child may be regularly exposed in their home environment to people who may not have a relationship to the child but, because of the person’s proximity and access to the child, are in a position to abuse the child in the child’s home.

Contrary to Moore’s contention that there must be “significant social or familial ties” between the defendant and the victim to be a “household member,” there is nothing in the language of CR § 3-601(a)(4) that requires a relationship of any sort. *See Rogers*, 468 Md. at 14 (stating that when interpreting a statute, “we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning”). Moreover, we note that persons with “familial ties,” or family members, are a separate class of individuals who may be charged with child abuse

presence in the home of a child at the time of the alleged abuse[,]” is virtually identical to the current definition in CR § 3-601(a)(4).

under CR §3-602(b)(2). We, therefore, assume that there is no overlap in the provisions of the statute.⁴ See *Kranz*, 459 Md. at 474 (stating that we read the statute “as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless[,] or nugatory”).

Moore suggests that a literal reading of the definition of household member in CR § 3-601(a)(4) is “overly broad,” and that it would be “absurd” and “unjust” to apply it to “any person who resides at the same residence as a minor, even if they share no other relationship with that minor.” We do not agree that such an application would be absurd and unjust. As the State points out, due to financial constraints, or other circumstances, some children may have to share a home with people whom they are not well-acquainted, as the facts of this case demonstrate. Indeed, we think it would be contrary to the intent of the statute if it were interpreted to exempt persons who abuse a child that lives with them from prosecution simply because they have no pre-existing relationship but are only “strangers who shared an address.” Just as the Court in *Wright* declined to limit the definition of “household member” based on a relationship, the General Assembly was concerned about children who are particularly vulnerable in their home and “extend[ed] the reach of the statute for the greater protection of children.” *Wright*, 349 Md. at 356. As

⁴ “‘Family member’ means a relative of a minor by blood, adoption, or marriage.” CR § 3-601(a)(3).

such, the broader definition of “household member” aims to hold responsible all individuals who exploit their increased access to children.⁵

In sum, we conclude that the language of CR § 3-601(a)(4) is clear and unambiguous, and is consistent with the purpose of the statute. We, therefore, give meaning to the statute as written, and hold that the evidence that Moore and A.T. lived in the same single-family house was sufficient to permit the jury to conclude that Moore lived with A.T. Alternatively, the evidence was sufficient for the jury to conclude that the house was A.T.’s home, and that Moore was a “regular presence” in her home. Either way, the evidence was sufficient to support a finding that Moore was a “household member” for purposes of CR § 3-602(b)(2). The circuit court, therefore, did not err in denying the motion for judgment of acquittal on the charge of sexual abuse of a minor by a household member.

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

⁵ The facts of Moore’s case prove this. Moore did not attack A.T. as a stranger might. Rather, Moore took advantage of his knowledge of the house and the fact that C.T. had fallen asleep on the sofa to select a moment when A.T. would be particularly vulnerable to his attack. We can’t imagine that the General Assembly wasn’t considering such a scenario when it enacted the statute.