Circuit Court for Wicomico County
Case No. 22-CR-18-000331

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 26

September Term, 2019

JONATHAN DAVID PRICE

v.

STATE OF MARYLAND

Fader, C.J.,
Friedman,
Gould,

JJ.

Opinion by Fader, C.J.

Filed: June 30, 2020

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

A jury sitting in the Circuit Court for Wicomico County convicted Jonathan David Price, the appellant, of sexual abuse of a minor, four counts of second-degree rape, two counts of third-degree sex offense, and four counts of fourth-degree sex offense. Mr. Price argues that the life sentence he received for second-degree rape is illegal because (1) the indictment was insufficient to support an enhanced sentence on second-degree rape, and (2) the jury did not make the requisite findings to support imposition of that enhanced sentence. He further contends that the trial court erred in permitting the State to amend the indictment at trial; denying his motion for a mistrial; permitting the State to cross-examine him regarding his opinion about the victim's credibility; and convicting him on all counts based on legally insufficient evidence. We hold that the life sentence imposed for second-degree rape is illegal because the jury was not asked to make—and so did not make—the requisite findings to support imposition of that sentence. We otherwise find no error and so will affirm the convictions. Consistent with *Twigg v. State*, 447 Md. 1, 27-30 & n.14 (2016), we will vacate all of Mr. Price's sentences and remand to the circuit court for resentencing.

BACKGROUND

Factual Background[1]

At the time of the relevant events, the victim, J.C., was between ten and 11 years old and living in an apartment in Salisbury with her mother, Lovey Bryant, and other

[1] Our recitation of the facts is based on the evidence presented at trial, "including all reasonable inferences to be drawn therefrom, in the light most favorable to the State." *See Fuentes v. State*, 454 Md. 296, 307 (2017).

family. Mr. Price, who was 35 years old at the time, lived with his wife, Jennifer Harrison, in a house across the street from J.C. Ms. Bryant acted as a "caretaker" for Ms. Harrison, who was disabled, and Mr. Price, who suffered from a traumatic brain injury and post-traumatic stress disorder related to military service. Ms. Bryant cooked, cleaned, and performed other chores for them as needed.

J.C. routinely spent time at Mr. Price's house, both with and without Ms. Bryant present. During these visits, J.C. "would sit there and watch TV" or help with chores. Mr. Price and Ms. Harrison also sometimes took J.C. to stores with them. J.C. testified that because Mr. Price is a "grownup," her "mom said I have to listen to him," and she followed his directions.

Nicholas Orem, who is Mr. Price's brother; Stephanie Orem, Mr. Orem's wife; and their children resided in a separate apartment downstairs from J.C.'s family. In late December 2017, J.C. told her mother and the Orems that Mr. Price "was touching [her] in a way that [she] didn't want him to" and had kissed her on the mouth. Ms. Bryant reported the conduct.

On December 21, 2017, Katie Beran, a social worker for the Wicomico County Department of Social Services, interviewed J.C. J.C. told Ms. Beran that Mr. Price had kissed her on the mouth "[f]our or five" times; that he had asked her to sit on his lap more than ten times, and, when she did, she "felt something hard on [her] back"; that he had asked her to touch his penis, but she had refused; and that on one occasion he had put his hands down the front of her pants, inside of her underwear, and digitally penetrated her

vagina. J.C. recounted that one of the kissing incidents occurred when she was with Mr. Price, Ms. Harrison, and Mr. Price's nephews at Sam's Club. She explained that Mr. Price and Ms. Harrison were responsible for taking care of her and that Ms. Bryant "trusts them . . . to take [her] to the store." She considered Mr. Price to be her "uncle," whom she agreed was "in charge" whenever she was at his house.

In April 2018, J.C. disclosed new details about Mr. Price's actions.[2] J.C. told Ms. Bryant that Mr. Price had put his penis in her mouth. In a second interview with Ms. Beran, J.C. reported that Mr. Price had "put his thing in [her] mouth" on four separate occasions, all occurring in Mr. Price's living room. On each occasion, Mr. Price had directed J.C. to get on her knees and suck his penis, and on each occasion, he ejaculated into her mouth. Ms. Beran confirmed by reference to an anatomical drawing that J.C.'s reference to "his thing" was to Mr. Price's penis. J.C. also reported that Mr. Price had touched her buttocks on one occasion.

In May 2018, Mr. Price was charged with 11 counts of sexual offenses pertaining to J.C.: one count of sexual abuse of a minor (Count 1); four counts of second-degree rape (Counts 2 through 5); two counts of third-degree sex offense (Counts 6 and 7); and four counts of fourth-degree sex offense (Counts 8 through 11).[3]

[2] J.C.'s disclosures in April 2018 appear to have been about incidents that occurred before her initial report in December 2017, not new incidents.

[3] Mr. Price's indictment contained a total of 20 counts. The counts not related to J.C. were predicated on sex offenses Mr. Price was alleged to have committed against three other minors. Those charges were resolved in other proceedings that are not before us.

The four second-degree rape charges are especially pertinent to this appeal. In each of those counts, the indictment contains the following identical language:

> THAT Jonathan David Price, between the 1st day of December, 2017 and the 20th day of December, 2017, in Wicomico County, State of Maryland, did unlawfully commit a rape in the second degree upon J.C., in violation of CR 3-304 of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such cases made and provided, against the peace, government and dignity of the State.
>
> CR: 3-304
> CJIS Code: 2 1103
> Maximum Penalty: Active Incarceration: 20 Years Maximum Fine $0.00

Mr. Price did not request a bill of particulars as to any charges in the indictment.

The Evidence

A jury trial took place on November 5, 2018. J.C. testified that Mr. Price had kissed her, put his penis in her mouth "once or twice," digitally penetrated her "three or four times," and directed her to sit in his lap four times. J.C. was unable to pinpoint the exact dates of these incidents, but she testified that (1) one incident of fellatio occurred after Mr. Price and Ms. Harrison purchased their Christmas tree, but before they put it up; (2) Mr. Price had kissed her at Sam's Club in December 2017; (3) he had touched her buttocks before Thanksgiving 2017; and (4) he had digitally penetrated her after Thanksgiving.

Ms. Bryant testified that J.C. was permitted to go to Mr. Price's house without her, but that she had told Ms. Harrison and Mr. Price that he should not "have [her children] on his lap." Ms. Bryant stated that she expected J.C. to "respect [her] elders," and if Mr. Price told her to do something, she would be expected to do it. According to Ms. Bryant, J.C. did not initially disclose the extent of the sexual conduct because she was embarrassed. As

described in more detail below, Mr. Price unsuccessfully moved for a mistrial after the court sustained certain of his objections to Ms. Bryant's testimony.

Ms. Beran testified about her two interviews with J.C., recounting that J.C. was 11 years old at the time of both interviews. The State played video recordings of both interviews to the jury and introduced into evidence both the videos and transcripts of each interview.

Salisbury City Police Detective Kasey Oppel, the lead investigator on the case, testified that Mr. Price provided a birth date of May 11, 1982 when he was arrested.

At the close of the State's case, Mr. Price's counsel moved for judgment of acquittal on all counts. He argued, in part, that J.C.'s testimony was too vague for a reasonable juror to find that the alleged sexual contact occurred between December 1, 2017 and December 20, 2017, as charged in the indictment. The State then moved to amend the indictment to expand the timeframe for each count to November 1, 2017 through December 20, 2017. Over Mr. Price's opposition, the court granted the motion to amend. The court denied the motion for judgment of acquittal, finding, among other things, that J.C.'s references to holidays provided "enough evidence for the jury . . . regardless of some vagueness with respect to the exact dates."

Mr. Price testified in his own defense that in December 2017, he lived with Ms. Harrison,[4] but that sometimes Ms. Bryant, J.C., and J.C.'s sisters also lived with them. He categorically denied kissing J.C. or having any sexual contact with her, stating that he

[4] Ms. Harrison passed away in February 2018.

"look[s] at her more like a stepdaughter." Mr. Price acknowledged, however, that J.C. regularly sat on his lap.

Jury Instructions

As relevant to this appeal, the court instructed the jury as to two different modalities of second-degree rape. The court first addressed second-degree rape by force:

> The Defendant is charged with the crime of second degree rape by force. In order to convict the Defendant of second degree rape by force, the State must prove: l), the Defendant committed unlawful penetration with [J.C.]; 2), that the act was committed by force or threat of force; and 3), that the act was committed without the consent of [J.C.].
>
> Unlawful penetration means the penetration, however slight, of another's genital opening or anus with a[n] object or part of the person's body if it can be reasonably construed that the act is intended for sexual arousal or gratification or for abuse of the other person. The amount of force necessary depends on the circumstances. No particular amount of force is required, but it must be sufficient to overcome resistance or the will to resist. You must be satisfied that [J.C.] resisted and that her resistance was overcome by force or threat of force . . . or her will to resist was overcome by the Defendant's actions under the circumstances.
>
> If [J.C.] submitted to the unlawful penetration, and if you find that her submission was induced by force or threats that put her in reasonable fear of bodily harm to herself, then her submission was without consent. Her fear was reasonable if you find that under the circumstances a reasonable person would fear for her safety.
>
> Finally, consent means actually agreeing to the act of unlawful penetration rather than merely submitting as a result of force or threat of force.

The court then instructed the jury regarding second-degree rape based on age:

> The Defendant is charged with the crime of second degree rape based on age. In order to convict the Defendant of second degree rape based on age, the State must prove: l), the Defendant committed unlawful penetration with [J.C.]; 2), that [J.C.] was under 14 years of age at the time of the act; and 3), that the Defendant was at least four years older than [J.C.].

> Unlawful penetration, again, means the penetration, however slight, of another's genital opening or anus with an object or part of the person's body if it can be reasonably construed that the act is intended for sexual arousal or gratification or for the abuse of either person.

The Verdict

The case was sent to the jury on a special verdict sheet with 11 numbered counts, each specifying the amended date range and the sexual act at issue. The counts of the verdict sheet pertinent to this appeal are depicted below:

STATE OF MARYLAND	*	IN THE CIRCUIT COURT
	*	FOR WICOMICO COUNTY
v.	*	STATE OF MARYLAND
JONATHAN DAVID PRICE	*	CASE No. 22-CR-18-000331

* * * * * * * * * * * * *

VERDICT SHEET

1) Sexual abuse of a minor (Any Sexual Act) (November 1 – December 20, 2017)

Guilty ✓ Not Guilty ________

2) Rape – Second Degree (Fellatio) (November 1 – December 20, 2017)

Guilty ✓ Not Guilty ________

3) Rape – Second Degree (Fellatio) (November 1 – December 20, 2017)

Guilty ✓ Not Guilty ________

4) Rape – Second Degree (Digital Penetration) (November 1 – December 20, 2017)

Guilty ✓ Not Guilty ________

5) Rape – Second Degree (Digital Penetration) (November 1 – December 20, 2017)

Guilty ✓ Not Guilty ________

The jury found Mr. Price guilty on all 11 counts. The court subsequently sentenced him to a term of life in prison for one count of second-degree rape arising from an act of fellatio

(Count 2) and a consecutive term of 25 years for child sexual abuse (Count 1). The remaining convictions were merged for sentencing purposes. This timely appeal followed.

DISCUSSION

I. THE INDICTMENT WAS NOT DEFECTIVE AS TO COUNT 2, BUT THE LIFE SENTENCE IMPOSED ON COUNT 2 IS ILLEGAL.

Mr. Price maintains that the life sentence imposed on Count 2 for second-degree rape must be vacated for two reasons. First, he contends that the trial court was without jurisdiction to impose a life sentence on Count 2 because the State "failed to charge in the indictment" the facts giving rise to a sentencing enhancement. Second, he argues that the sentence was illegal because the jury was not instructed that it was required to find the facts supporting the age-based enhancement, and the verdict sheet does not reflect that it so found. We hold that the indictment was not defective, but that the life sentence imposed on Count 2 is illegal because the jury did not find the requisite facts to support the enhanced sentence.

Section 3-304 of the Criminal Law Article, which governs the three "modalities by which one might commit the crime of second-degree rape," *Travis v. State*, 218 Md. App. 410, 423 (2014), provides:

> (a) A person may not engage in vaginal intercourse or a sexual act with another:
>
> > (1) by force, or the threat of force, without the consent of the other;
> >
> > (2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual . . . ;

> (3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.
>
> (b) 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) (1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape 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 rape 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 sentence shall not apply.
>
> (d) If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

Md. Code Ann., Crim. Law § 3-304 (Repl. 2012; Supp. 2019). As pertinent to this appeal, a "sexual act" includes both fellatio and digital penetration. *Id.* § 3-301(d)(1)(iii) & (v).

As set forth in § 3-304(c)(1), the penalty for second-degree rape ordinarily may not exceed 20 years. However, the available penalty range increases to 15 years to life if the State: (1) proves that the defendant is "18 years of age or older"; (2) proves that the victim is "a child under the age of 13 years"; (3) proves the elements of either the force or

vulnerable individual modalities of second-degree rape;[5] and (4) complies with its obligation to provide written notice of its intent to seek the enhanced penalty "at least 30 days before trial." *Id.* § 3-304(b), (c)(2), (c)(2)(iv), (d).

A. The State Was Not Required to Charge in the Indictment the Facts Supporting the Sentencing Enhancement.

Mr. Price contends that the indictment was invalid because Counts 2 through 5 did not set forth, "as a necessary element, the fact[s] justifying the imposition of the sentence enhancement." As a result, he contends, "the trial court lacked jurisdiction to impose a life sentence." The State argues that Mr. Price waived this contention by failing to raise it in the circuit court and that, in any event, the State was not required to charge in the indictment the facts necessary to support application of the greater sentencing range.

The Court of Appeals recently explored the circumstances in which a defendant will be deemed to have waived a challenge to a charging document by failing to timely raise the alleged defect. *See Shannon v. State*, 468 Md. 322 (2020). In determining whether an indictment is defective, we apply a non-deferential standard of review. *Id.* at 335. As a general matter, a defendant must raise "[a] defect in the charging document" by filing a motion in the circuit court "within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court." Md. Rule 4-252(a)(2), (b). Failure to do so generally results in waiver of the defect. *Id.* An exception to waiver exists,

[5] Neither party asserts that the vulnerable individual modality of second-degree rape—which is set forth in § 3-304(a)(2) and which can also give rise to an enhanced sentence based on the ages of the victim and the perpetrator—applies here. For purposes of the remainder of our analysis, therefore, we do not discuss the vulnerable individual modality of second-degree rape.

however, "if, as a result of the defect, the charging document fails 'to show jurisdiction in the court or . . . to charge an offense.'" *Shannon*, 468 Md. at 328 (quoting Md. Rule 4-252(a)(2), (d)). In that case, "the defect may be raised 'at any time.'" *Shannon*, 468 Md. at 328 (quoting Md. Rule 4-252(d)). "A claim that a charging indictment fails to charge or characterize an offense is jurisdictional" because "a court is without power to render a verdict or impose a sentence under a charging document which does not charge an offense within its jurisdiction." *Williams v. State*, 302 Md. 787, 791-92 (1985).

Mr. Price's first challenge relates to the applicability of the greater sentencing range. He argues that the circuit court lacked jurisdiction to impose a sentence greater than 20 years because the facts necessary to support a greater sentence were not included in the indictment. In Counts 2 through 5, the State used the statutorily prescribed short form indictment for second-degree rape, stating identically for all four charges:

> THAT, Jonathan David Price, between the 1st day of December, 2017 and the 20th day of December, 2017,[6] in Wicomico County, State of Maryland, did unlawfully commit a rape in the second degree upon J.C., in violation of CR 3-304 of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such cases made and provided, against the peace, government and dignity of the State.
>
> CR: 3-304
> CJIS Code: 2 1103
> Maximum Penalty: Active Incarceration: 20 Years Maximum Fine $0.00

Mr. Price failed to challenge the sufficiency of the indictment before the circuit court. As a result, he has waived any challenge to the indictment other than a jurisdictional

[6] As discussed, the trial court later granted the State's motion to amend the dates in the indictment.

challenge. *Shannon*, 468 Md. at 328. Mr. Price argues that he has made such a challenge by objecting to the indictment's failure to identify facts to support a sentence greater than 20 years.

Unfortunately for Mr. Price, his argument is foreclosed on the merits by the Court of Appeals's decision in *Evans v. State*, 389 Md. 456 (2005). The defendant in *Evans* was sentenced to death based on two murder convictions. *Id.* at 461. Relying on the United States Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002), the defendant argued that his indictment was defective because it failed to allege facts to support three predicate elements the State was required to prove at the time to establish his eligibility for the death penalty: (1) his principalship in the crime; (2) application of at least one aggravating factor; and (3) that the aggravating factors outweigh any mitigating factors. *Evans*, 389 Md. at 466.

The Court of Appeals held that neither federal nor Maryland law required that these elements be identified in an indictment filed in a state court.[7] *Id.* at 474, 480. The Court observed that the State had charged the defendant with murder using the short form indictment expressly authorized by statute. *Id.* at 472. A separate statute required the State to provide advance written notice of its intent to seek the death penalty and its reliance on "aggravating factors allowed under the statute." *Id.* at 473. In *Evans*, the State had used

[7] The Court observed that the Supreme Court had held that any elements supporting an enhanced sentence, other than the fact of a prior conviction, must be included in an indictment filed in federal court, but that the Supreme Court had expressly declined to extend that requirement to state courts. *Evans*, 389 Md. at 474-75 (discussing *Apprendi*, *Ring*, and *Jones v. United States*, 526 U.S. 227 (1999)).

the appropriate short form indictment and provided sufficient written notice. *Id.* In effect, the Court concluded, the written notice satisfied due process requirements that might otherwise have been satisfied by including the same information in the indictment. *Id.* at 472, 478-80.

Here, as in *Evans*, the State charged Mr. Price using the short form indictment.[8] *See* Crim. Law § 3-317(a). And, as in *Evans*, the State followed up the indictment with the statutorily required notice of its intent to seek the enhanced sentence.[9] *See* Crim. Law § 3-304(d). Based on *Evans*, these documents collectively satisfied the State's due process obligation, and the absence from the indictment of facts alleged in the written notice does not implicate the circuit court's jurisdiction to impose the enhanced sentence on Mr. Price.

B. The Life Sentence Imposed on Count 2 Is Illegal Because the Jury Did Not Find Beyond a Reasonable Doubt the Facts Required to Support Imposition of an Enhanced Sentence.

We now turn to Mr. Price's argument that his life sentence must be overturned because the jury was not asked to, and did not, make the predicate findings required to support that sentence. The State concedes that the jury was required to make those findings, but argues that: (1) Mr. Price failed to preserve this argument because he did not

[8] Pursuant to the short form statute, an indictment "is sufficient if it substantially states: '(name of defendant) on (date) in (county) committed a rape or sexual offense on (name of victim) in violation of (section violated) against the peace, government, and dignity of the State.'" Crim. Law § 3-317(a).

[9] On September 24, 2018—more than 30 days before trial—the State notified Mr. Price "pursuant to Maryland Criminal Law Article, Section 3-304(d) of its intent to seek a sentence of imprisonment for not less than fifteen (15) years and not exceeding life under Criminal Law Article, Section 3-304(c)(2)."

object to the verdict sheet or the jury instructions; and (2) the relevant elements were undisputed.

The Court of Appeals and the Supreme Court have held, respectively, that Maryland common law and federal constitutional law require a jury to find beyond a reasonable doubt any facts that increase the maximum sentence faced by a defendant. In *Wadlow v. State*, 335 Md. 122 (1994), the Court of Appeals addressed a statute mandating an enhanced penalty if a defendant possessed more than a certain quantity of drugs. *Id*. at 125-26. The Court explained that, under Maryland common law, ordinarily "where the legislature has prescribed different sentences for the same offense, depending upon a particular circumstance of the offense, . . . the presence of that circumstance must be alleged in the charging document, and must be determined by the trier of fact applying the reasonable doubt standard."[10] *Id.* at 129. The Court held that because there was no evidence that in enacting the statute the legislature intended to depart from that settled principle, *id.* at 132, for a court to impose the enhanced sentence, the State was required to (1) allege in the indictment that the defendant possessed the necessary amount of drugs, (2) submit that issue to the jury for determination beyond a reasonable doubt, and (3) identify the statutory basis for the penalty. *Id*. at 132-33 & n.4.

Subsequently, in *Apprendi*, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment required that "[o]ther than the fact of a prior conviction, any

[10] As previously discussed, the Court of Appeals has held that the general requirement that such circumstances "must be alleged in the charging document" does not apply where the General Assembly has prescribed that those circumstances may be raised by written notice. *See Evans*, 389 Md. at 477.

fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. Under *Apprendi*, "the 'statutory maximum' . . . is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Rogers v. State*, 468 Md. 1, 38 (2020) (quoting *Blakely v. Washington*, 542 U.S. 296, 303 (2004)). Thus, "every defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment." *Id.*

As noted, the State does not contest that *Wadlow* and *Apprendi* mandated that the jury find the facts necessary to impose the enhanced penalty here. The State asserts, however, that Mr. Price waived his current challenge when he did not object to the verdict form or jury instructions. This Court's decision in *Parker v. State*, 185 Md. App. 399 (2009), forecloses that argument. There, we assessed a defendant's contention that the State failed to comply with *Apprendi* in the context of a prosecution under § 9-303 of the Criminal Law Article, which, as pertinent, prohibited retaliation against a witness for reporting a crime. At that time, a violation of that statute ordinarily constituted a misdemeanor punishable by a sentence not exceeding 5 years,[11] but the statute authorized an enhanced penalty of up to 20 years in prison if the "report . . . relate[d] to a felonious violation of [the controlled dangerous substances title]." *Parker*, 185 Md. App. at 409-10 (quoting Crim. Law § 9-303(c)(2)). The State charged and adduced evidence at trial that the defendant retaliated against the victim for reporting felonious drug activity to the

[11] In 2018, the General Assembly amended § 9-303(c)(1) to authorize a penalty of up to ten years' imprisonment for a misdemeanor violation. *See* 2018 Md. Laws, ch. 145.

police, but it did not submit that specific question to the jury. *Parker*, 185 Md. App. at 404-10. The jury returned a general verdict of guilty on the charge of retaliation, and the court sentenced the defendant to 20 years' incarceration on that charge. *Id.* at 411.

On appeal, the defendant argued that because the jury did not make the finding required to support a sentence enhancement, his sentence was illegal. *Id*. at 411-12. As a threshold matter, this Court addressed whether the defendant's failure to raise the issue at trial constituted a waiver. *Id.* at 414. We determined that it did not, for two reasons. First, because "it was incumbent on the State, as the party seeking enhancement, to ask for a jury determination of the predicate facts," we held that the defendant "did not waive his right to challenge imposition of the enhanced sentence merely because he did not ask the court to submit that issue to the jury." *Id*. Second, we held that if the defendant were correct that the jury had not found the necessary predicate facts to support the enhanced penalty, then the sentence would be "intrinsically and substantively unlawful." *Id.* at 415 (quoting *Chaney v. State*, 397 Md. 460, 466-67 (2007)). And, because an illegal sentence may be corrected at any time, "the issue should ordinarily be reviewed on direct appeal even if no objection was made to the trial court." *Parker*, 184 Md. App. at 415 (quoting *Walczak v. State*, 302 Md. 422, 427 (1985), *abrogated on other grounds as recognized by Savoy v. State*, 336 Md. 355 (1994)).

On the merits, after analyzing *Apprendi*, *Wadlow*, and other cases applying those holdings, this Court held that the enhanced sentence was illegal because even though the jury had been presented with "ample evidence" that the victim's "report" concerned

felonious drug activity, the jury was not asked to, and so did not, make any finding on that issue. *Parker*, 184 Md. App. at 421.

Mr. Price's situation is similar to that of the defendant in *Parker*, in that the jury was presented with "ample evidence" to support a greater sentence, but it was not asked to, and so did not, make findings on that issue. For Mr. Price to be subject to a sentence of 15 years-to-life for the force modality of second-degree rape, the State was required to prove that (a) Mr. Price was over age 18, (b) J.C. was under age 13, *and* (c) Mr. Price used force as described in § 3-304(a)(1). The State adduced evidence to support all of those elements. It introduced evidence that J.C. was ten and 11 years old, and Mr. Price was 35 years old, at the relevant time; and J.C. testified that she suffered abuse undertaken by force and without her consent. Nevertheless, neither the jury instructions nor the verdict sheet asked the jury to make findings regarding any of those issues.

The jury instructions identified the elements of both the force and age modalities of second-degree rape. The court thus instructed the jury that it could convict Mr. Price of second-degree rape if it found that his actions were undertaken *either* (1) "by force, or threat of force, without the consent of [J.C.]," Crim. Law § 3-304(a)(1); *or* (2) "if [J.C. was] under the age of 14 years, and [Mr. Price was] at least 4 years older than the victim," *id.* § 3-304(a)(3). The verdict sheet then asked the jury to answer only whether it found Mr. Price guilty of "Rape – Second Degree (Fellatio)" or "Rape – Second Degree (Digital Penetration)," without requiring the jury to specify whether its conclusion was based on the force modality, the age modality, or both. Because the jury was given the option to

pick from either modality, without having to specify which it found to have been met, we cannot know whether the jury found the force modality was satisfied. And because, of the two options presented to the jury, only the force modality could support the imposition of the greater sentence pursuant to § 3-304(c)(2), the jury did not necessarily make the findings required by *Apprendi* and *Wadlow*.

The Court of Appeals's recent decision in *Rogers v. State* is also instructive. The question in *Rogers* was whether a defendant who had pled guilty to human trafficking was required to register with the State's Sex Offender Registry based on the age of his victim. 468 Md. at 5-6. The defendant had pled guilty to one count of human trafficking, "an offense whose elements did not require proof of the victim's age," and the victim's age was not otherwise established at the plea proceeding. *Id.* Nonetheless, the Department of Public Safety and Correctional Services separately determined that the victim was a minor and, therefore, ordered the defendant to register as a sex offender. *Id.* The Court of Appeals—after first concluding that "sex offender registration under the current statutory scheme is sufficiently punitive" that it "essentially increases the punishment or penalty for that crime," *id.* at 37-38—applied *Apprendi* in holding that "a fact necessary for placement on the [State's Sex Offender] Registry, such as the victim's age, must be determined by the trier of fact beyond a reasonable doubt, during the adjudicatory phase of the criminal proceeding, prior to sentencing." *Id.* at 45. Because the age of the victim was not necessarily established as an element of the crime of which the defendant was convicted or otherwise found by the trier of fact, the Court held that the defendant could not be required

to register as a sex offender. *Id.* Similarly here, the element of force was not necessarily determined as an element of the crime of which Mr. Price was convicted, nor was it otherwise found by the jury, and so it cannot be used to establish the range of Mr. Price's sentence.

As an alternative to its waiver argument, the State contends that the failure to submit to the jury the elements required for the greater sentence is of no moment because none of those facts were disputed. As an initial matter, we observe that that was also the case in *Parker*, and neither *Apprendi* nor *Wadlow* suggests that a defendant's failure to expressly dispute facts the State is required to prove relieves the State of its obligation to submit those facts to the jury. We also observe that "undisputed" is not the same as "stipulated." In a criminal prosecution, the State is required to prove all elements of a crime, regardless of whether the defendant disputes them. *See State v. Taylor*, 347 Md. 363, 375 (1997) ("[T]he prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." (emphasis removed) (quoting *Estelle v. McGuire*, 502 U.S. 62, 69-70 (1991))). Although a defendant's stipulation to a fact can eliminate the State's need to present evidence on that point, a defendant's failure to affirmatively dispute a fact does not have the same effect. Here, Mr. Price did not stipulate that he used force or the threat of force against J.C. To the contrary, he claimed that the conduct on which the convictions were based never occurred at all. The State was thus required to prove the use or threat of force, and the greater sentence was available only if the jury found it to be true.

In sum, the jury was not asked to, and did not, make findings regarding all of the elements necessary to impose a greater sentence on Mr. Price pursuant to Criminal Law § 3-304(c)(2). It is possible that the jury found Mr. Price guilty only of the age modality of second-degree rape, without also finding that he employed force or the threat of force.[12] As a result, under *Apprendi* and *Wadlow*, the maximum sentence that could be imposed for Mr. Price's second-degree rape conviction was 20 years. We will therefore reverse the life sentence imposed for Count 2. We will further exercise our discretion pursuant to *Twigg v. State*, 447 Md. 1, 27-30 & n.14 (2016), to vacate the sentences imposed on all counts to provide the circuit court with "maximum flexibility on remand to fashion a proper sentence," so long as it does not exceed his original aggregate sentence of life plus 20 years.

II. THE SECOND-DEGREE RAPE CONVICTIONS AND SENTENCES ARE NOT OTHERWISE INFIRM.

Mr. Price next contends that his convictions and sentences for second-degree rape all must be vacated because the indictment charged him with "commit[ing] a rape in the second degree upon J.C., in violation of [§] 3-304," but did not specify that the rape charges were predicated upon the sexual acts of digital penetration and fellatio, rather than intercourse. This argument lacks merit.

Criminal Law § 3-304 proscribes a person from "engag[ing] in vaginal intercourse or a sexual act with another" by any of three modalities, and includes all of that conduct under the umbrella of second-degree rape. "Sexual act" is, in turn, defined to include both

[12] To the extent there is ambiguity regarding whether the jury found Mr. Price guilty of the force modality or the age modality of second-degree rape, that ambiguity must be resolved in favor of Mr. Price. *See Johnson v. State*, 228 Md. App. 27, 46-47, 51 (2016).

fellatio and digital penetration. Crim. Law § 3-301(d)(1)(iii) & (v). Section 3-317(a) then provides that "[a]n indictment . . . for a crime under . . . § 3-304 . . . is sufficient if it substantially states: '(name of defendant) on (date) in (county) committed a rape or sexual offense on (name of victim) in violation of (section violated) against the peace, government, and dignity of the State.'" When that statutory short form indictment is used, "the defendant is entitled to a bill of particulars specifically setting forth the allegations against the defendant." *Id.* § 3-317(b).

Here, the State charged Mr. Price consistent with the statutory short form:

> THAT Jonathan David Price, between the 1st day of December, 2017 and the 20th day of December, 2017, in Wicomico County, State of Maryland, did unlawfully commit a rape in the second degree upon J.C., in violation of CR 3-304 of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such cases made and provided, against the peace, government and dignity of the State.
>
> CR: 3-304
> CJIS Code: 2 1103
> Maximum Penalty: Active Incarceration: 20 Years Maximum Fine $0.00

Mr. Price argues that the indictment's reference only to "rape in the second degree" would normally be understood to encompass only vaginal intercourse, and not fellatio and digital penetration. Thus, he asserts, because his convictions were premised on acts of fellatio and digital intercourse, he was unlawfully convicted of crimes that were not charged in the indictment. For two reasons, we disagree.

First, by definition, the crime of "rape in the second degree" encompasses both vaginal intercourse and "sexual acts," including fellatio and digital penetration. The indictment referenced not only the crime of "rape in the second degree," but also the

statutory provision that defines that crime. Mr. Price thus could not reasonably have concluded that he was charged only with a crime requiring vaginal intercourse. Second, the statutory short form does not require the State to specify further in the indictment the particular conduct on which the charge is based. To the extent a defendant wants more information about the factual basis for the charges, he or she "is entitled to a bill of particulars specifically setting forth the allegations against the defendant." Crim. Law § 3-317(b). That Mr. Price never requested a bill of particulars does not render the statutorily prescribed short form insufficient.

Mr. Price relies on *Johnson v. State*, 427 Md. 356 (2012), as support for his contention that he was convicted of crimes not charged in the indictment. His reliance is misplaced. In *Johnson*, the defendant was indicted on multiple offenses, including attempted murder, and convicted on multiple offenses. *Id.* at 362-63. However, he was never indicted on one of the charges for which he was convicted: assault with the intent to murder. *Id.* As a result, the Court of Appeals vacated that conviction. *Id.* at 377-78, 380. Here, by contrast, Mr. Price was indicted for second-degree rape and convicted of second-degree rape. *Johnson* is inapposite.

Mr. Price also asserts that because the court's instructions to the jury mentioned only "unlawful penetration," which was not defined to include "fellatio," his convictions for second-degree rape based upon fellatio (Counts 2 and 3) must be vacated. Because Mr. Price did not object to the jury instructions, however, he has waived that contention of error. *See* Md. Rule 4-325(e) ("No party may assign as error the giving or the failure to

give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection."); *Lindsey v. State*, 235 Md. App. 299, 329 (2018) ("The general rule is that the failure to object to a jury instruction at trial results in a waiver of any defects in the instruction, and normally precludes further review of any claim of error relating to the instruction." (quoting *Alston v. State*, 414 Md. 92, 111 (2010))).

Moreover, notwithstanding the court's instructions, the record reflects that the jury found Mr. Price guilty of second-degree rape based on fellatio, as well as digital penetration, as permitted by Criminal Law § 3-304. In their opening statements and closing arguments, both the prosecutor and defense counsel specifically referenced the allegations of fellatio in discussing the second-degree rape charges. The verdict form also expressly identified Counts 2 and 3 as premised on "fellatio" and Counts 4 and 5 as premised on "digital penetration." And when the jury returned its verdict, the clerk asked the foreperson how the jury found on two charges of "rape second degree, fellatio," and the jurors hearkened to their verdict on two counts of "rape second degree, fellatio."

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING THE STATE TO AMEND THE INDICTMENT DURING TRIAL.

Mr. Price next argues that the trial court abused its discretion in granting the State's motion to amend the date range provided in the indictment—from December 1 through December 20, 2017, to November 1 through December 20, 2017—during trial. Mr. Price acknowledges that ordinarily the dates in a charging document "may be amended in the court's discretion without changing the character of the offense," *see Thompson v. State*,

181 Md. App. 74, 99 (2008) (quoting *Manuel v. State*, 85 Md. App. 1, 18-19 (1990)), *aff'd*, 412 Md. 497 (2010), but he asserts that the amendment of the indictment to include the month of November 2017 caused "an actual prejudice" to him. We disagree.

"On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required." Md. Rule 4-204. "The purpose of this Rule is 'to prevent any unfair surprise to the defendant and his counsel.'" *Counts v. State*, 444 Md. 52, 57 (2015) (quoting *Johnson v. State*, 358 Md. 384, 392 (2000)). Because "[a]n amendment that constitutes merely a 'matter of form' does not change the character of the offense," *Thompson*, 412 Md. at 517 (quoting *Johnson*, 358 Md. at 388), "[a]n indictment may be corrected without the defendant's consent if the amendment does not alter any of the elements of the offense," *Thompson*, 412 Md. at 516 (quoting *Thompson*, 181 Md. App. at 99). Our courts "have repeatedly held that the date an indictment alleges that the criminal conduct occurred 'may be amended in the court's discretion without changing the character of the offense.'" *Id.*; *see, e.g.*, *State v. Mulkey*, 316 Md. 475, 482 (1989) ("[T]he the State is not confined to the specific date or dates stated in the charging document."); *Tucker v. State*, 5 Md. App. 32, 34-35 (1967) (concluding that the date of the alleged offense was a matter of "form," not "substance," and could be amended without changing the character of the offense charged).

Here, although the initial dates of the charged offenses covered December 1 through December 20, 2017, J.C. testified that certain acts Mr. Price allegedly committed occurred

near or before Thanksgiving.[13] Based on that testimony, the State moved to broaden the indictment to include the month of November 2017, and it was on that basis that the court granted the motion. We find no merit in Mr. Price's contention that the expansion of the timeframe altered the character of the charges he faced or prejudiced him in any way. *See Thompson*, 412 Md. at 516-17. The trial court therefore acted within its discretion in granting the motion to amend the indictment.

The case on which Mr. Price relies, *Burkett v. State*, 5 Md. App. 211 (1968), *overruled on other grounds by Goode v. State*, 41 Md. App. 623 (1979), is inapposite. In *Burkett*, the defendants were indicted on a charge for "being rogues and vagabonds" on a specific date, but "were called upon" at trial to defend against the conduct as having allegedly occurred on a different date. 5 Md. App. at 220-21. The amendment of the charging document at trial to include a second date was prejudicial, this Court held, because the defendants may "have been misled" by the change. *Id.* at 221. Here, by contrast, J.C.'s allegations were never tied to specific dates, and Mr. Price has not identified any aspect of his defense that relied on the timeframe initially set forth in the indictment. To the contrary, Mr. Price contended that the incidents did not occur at all. Therefore, the court did not abuse its discretion in allowing the amendment of the indictment.

[13] We take judicial notice that Thanksgiving Day in 2017 was on November 23. *See* Md. Rule 5-201(c), (f) ("A court may take judicial notice, whether requested or not," of an adjudicative fact, and may do so "at any stage of the proceeding"). We also observe that, as the Court of Appeals has previously noted, "young victims [are] often unable to state except in the most general terms when the acts [of sexual abuse] were committed." *State v. Bey*, 452 Md. 255, 271 (2017) (quoting *Cooksey v. State*, 359 Md. 1, 18-19 (2000)).

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. PRICE'S MOTION FOR MISTRIAL.

Mr. Price contends that because Ms. Bryant made "unfairly prejudicial remarks" when she testified that an "altercation" had occurred between himself and other children, the court abused its discretion in not declaring a mistrial. The State counters that Mr. Price's claim is "speculative" and that, in any event, the court properly instructed the jury to disregard the testimony. We agree with the State.

We review a court's decision to deny a motion for a mistrial for an abuse of discretion. *See Simmons v. State*, 436 Md. 202, 212 (2013). A trial court abuses its discretion if its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Stabb v. State*, 423 Md. 454, 465 (2011) (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)).

During her direct examination, the State asked Ms. Bryant about J.C.'s initial disclosure of the sexual abuse. Ms. Bryant explained that just before J.C. disclosed the sexual conduct with Mr. Price, she had been talking to J.C. about respecting her elders and how she should behave when spending time with Mr. Price and Ms. Harrison. Ms. Bryant testified that she had initiated that conversation because of a "feud" going on between Mr. Price and his brother's children. Defense counsel objected to the mention of the "feud," which the court sustained. This exchange followed:

> [PROSECUTOR]: Specifically, did you talk to [J.C.] about how she should behave with [Mr. Price] on that day, before she told you anything that had happened between her and [Mr. Price]?
>
> [MS. BRYANT]: Yes.

> [PROSECUTOR]: What were you guys talking about?
>
> [MS. BRYANT]: I told her that she should respect your elders and no sass . . . the same thing I pretty much just said. That's all.
>
> [PROSECUTOR]: Why did you say that to her on that day, what prompted that?
>
> [MS. BRYANT]: The other kids had an altercation with [Mr. Price], and I was telling her –
>
> [DEFENSE COUNSEL]: I'm going to object, Your Honor. Move to strike.

Although the circuit court sustained the objection, defense counsel moved for a mistrial. The court denied the motion for mistrial and instructed the jurors to "disregard anything concerning those last statements."

"[A] mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice." *State v. Zadeh*, 468 Md. 124, 145-46 (2020) (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)). In assessing whether a mistrial is warranted, courts consider a number of non-exhaustive factors, including (1) "whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement"; (2) "whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement"; (3) "whether the witness making the reference is the principal witness upon whom the entire prosecution depends"; (4) "whether credibility is a crucial issue"; and (5) "whether a great deal of other evidence exists." *Simmons*, 436 Md. at 220-21 (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). "No single factor is determinative," but all should be considered by the court in "evaluat[ing] whether the defendant was prejudiced" in a particular case. *Guesfeird*, 300 Md. at 659.

We find no abuse of discretion in the circuit court's denial of the motion for mistrial. Ms. Bryant's single, isolated reference to an "altercation" between Mr. Orem's sons and Mr. Price was not of the type likely to cause significant prejudice to Mr. Price. Moreover, contrary to Mr. Price's assertion, the term "altercation" does not necessarily suggest that he acted "inappropriately toward other children" in the same manner as alleged by J.C. Rather, it simply suggested that he had an argument of some kind with them. *See* "Altercation," *Merriam-Webster's Collegiate Dictionary* 37 (11th ed. 2014) (defined as "a noisy heated angry dispute; *also* : noisy controversy"). The trial court was "physically on the scene, able to observe matters not usually reflected in a cold record," and, therefore, it was in a much better position than we are to determine how the jury perceived the testimony. *See Simmons*, 436 Md. at 212 (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)). Further, the State's case against Mr. Price did not hinge upon Ms. Bryant's testimony. The jurors had before them "a great deal of other evidence," *see Simmons*, 436 Md. at 221, besides Ms. Bryant's testimony, including the testimony of several witnesses (including that of Mr. Price himself), video recordings, transcripts, and audio recordings. We are persuaded that, to the extent any prejudice might have resulted from Ms. Bryant's remark, the court's curative instruction alleviated that risk.

Mr. Price's reliance on *Rainville v. State*, 328 Md. 398 (1992), is unavailing. There, the defendant was convicted of a second-degree sexual offense against a minor. *Id.* at 402. When the mother was asked during trial about her child's demeanor upon disclosing the abuse, the mother revealed that the defendant was in jail for an offense committed against

the child's brother, who was also a minor. *Id*. at 399, 401. The trial court gave the jury a curative instruction but denied a motion for mistrial. *Id.* at 401-02. The Court of Appeals held that the trial court abused its discretion in denying the motion for mistrial because the evidence against the defendant was weak and the mother's unexpected response "almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction." *Id*. at 410. In this case, the trial court did not abuse its discretion in determining that Ms. Bryant's stray remark did not have such an effect.

V. MR. PRICE WAIVED HIS CHALLENGE TO THE STATE'S CROSS-EXAMINATION OF HIM ON THE SUBJECT OF J.C.'S CREDIBILITY.

Mr. Price contends that "the court erred in permitting the State to cross-examine [him] regarding his opinion about [J.C.'s] credibility." (Emphasis removed). The State argues that this issue is not preserved for our review, and we agree. Even if it were preserved, though, we would conclude that any error was harmless.

Mr. Price testified at trial that he suffered from post-traumatic stress disorder occasioned by his military service. On cross-examination, Mr. Price elaborated that, as a result of his illness, he has experienced violent flashbacks and, after an episode, often could not remember what happened. The State asked Mr. Price if he ever had experienced a flashback "around the kids." He replied, "No. Almost, but did not." The following exchange then occurred:

> [PROSECUTOR]: Would it surprise you to learn that [J.C.] had observed you having a flashback?
>
> [MR. PRICE]: She did?

[PROSECUTOR]: I take it it would surprise you then?

[MR. PRICE]: Yes.

The State then requested to mark as an exhibit an excerpt of the transcript of J.C.'s testimony, which prompted the following:

> [PROSECUTOR]: Now, I'm going to show you what I have just had marked as State's Exhibit Number 7. I want you to take a minute to read –
>
> [DEFENSE COUNSEL]: Your Honor, I'm just going to object. I think it's improper impeachment.
>
> THE COURT: I don't know what the question is going to be.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: I can't very well rule on it.
>
> [PROSECUTOR]: If you can read page 36, line 9.
>
> [DEFENSE COUNSEL]: And all I would say is, it's inappropriate for one witness, whoever that witness is, to comment on the testimony of another witness.
>
> THE COURT: Is this a transcript of somebody else's testimony?
>
> [PROSECUTOR]: Yes, Your Honor.
>
> THE COURT: Okay. Well, I don't know what the question is going to be.

The trial court reserved ruling on the objection, and the State showed the transcript to Mr. Price, who read it silently. The following exchange ensued:

> THE COURT: All right. Now, what is your question, Counselor?
>
> [PROSECUTOR]: Now that you've read that, does that remind you of a time where you might have had a flashback around [J.C.]."
>
> . . .

> [MR. PRICE]: Honestly, it brings forth memories of having a flashback but, you know, me and [Ms. Harrison] were talking about it so much around [J.C.], while she was in the room.
>
> [PROSECUTOR]: So you think that that is a made-up memory of [J.C]?
>
> [MR. PRICE]: Yes.
>
> [PROSECUTOR]: So, to your recollection, you don't recall having a flashback around the children?
>
> [MR. PRICE]: No, I do not.

Mr. Price's counsel did not object to any of the questions the State asked after showing Mr. Price the transcript.

Mr. Price's challenge to this testimony is not properly before us because he failed to object to the testimony that he now challenges. Under Rule 4-323(a), "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Defense counsel objected just after the State marked for identification a transcript of J.C.'s testimony, but he did not object to any of the questions the State asked after that. "[A] party opposing the admission of evidence must object at the time the evidence is offered." *Williams v. State*, 216 Md. App. 235, 254 (2014) (quoting *Klauenberg v. State*, 355 Md. 528, 545 (1999)). By failing to object to the prosecutor's questions, Mr. Price failed to preserve that issue for review.[14]

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[14] The State argues that Mr. Price failed to preserve his objection for a second reason, which is that the basis on which he initially objected is different from his argument on appeal. Specifically, the State argues that Mr. Price's initial objection was premised solely on the ground that J.C.'s prior testimony was improper impeachment, which is not

Even if Mr. Price's objection were preserved, and even if we were to agree that the court erred in permitting Mr. Price to offer his view that J.C.'s testimony was a "made-up memory," we nonetheless would conclude that the error was harmless. Mr. Price testified in his own defense about the extent and nature of his flashbacks, including that he sometimes could not recall what happened afterward. We fail to see how his belief as to whether J.C. had actually witnessed a flashback harmed his defense—which was that the conduct of which he stood accused had never occurred—or caused him any prejudice.

VI. THE EVIDENCE WAS LEGALLY SUFFICIENT TO CONVICT MR. PRICE ON ALL COUNTS.

Mr. Price raises two challenges to the sufficiency of the evidence supporting his convictions. First, he contends that the evidence was legally insufficient to sustain his conviction for child sexual abuse (Count 1) because the State failed to prove that he ever assumed responsibility to care for J.C. Second, he attacks the sufficiency of the evidence in general, asserting that "J.C.'s testimony was so lacking in credibility that no rational trier of fact could have found [him] guilty of any of the charges." The State responds that the "evidence provided an ample basis upon which the jury could find . . . that Price was to supervise J.C. when she was at his house," and that sufficient evidence supports the jury's verdict as to all of the convictions. We agree with the State.

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his argument on appeal. We disagree. Mr. Price also objected that "it's inappropriate for one witness, whoever that witness is, to comment on the testimony of another witness." Had that objection been raised at the appropriate time, it would have sufficed to preserve Mr. Price's current argument that the court should not have permitted him to be questioned about the credibility of J.C.'s testimony.

In determining whether evidence is legally sufficient to support a criminal conviction, we assess "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*, 232 Md. App. 583, 594 (2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We "view[] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the prevailing party," *Smith*, 232 Md. at 594 (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)), and "[w]e 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,'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)). We will not reverse a conviction on the evidence unless it is clearly erroneous. *State v. Manion*, 442 Md. 419, 431 (2015).

We turn first to Mr. Price's contention that the evidence was insufficient to prove that he assumed responsibility for J.C.'s supervision. Criminal Law § 3-602(b)(1) provides that sexual abuse of a minor occurs when "[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor . . . cause[s] sexual abuse to the minor." "Sexual abuse" is defined as "an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not." Crim. Law § 3-602(a)(4)(i).

In the context of § 3-602(b)(1), the phrase "responsibility for the supervision of a minor" means that "[a] person may have the responsibility for the supervision of a minor

child . . . although not standing *in loco parentis* to that child." *Harrison v. State*, 198 Md. App. 236, 243 (2011) (quoting *Pope v. State*, 284 Md. 309, 323 (1979)). "'Responsibility' . . . denotes 'accountability,' and 'supervision' emphasizes broad authority to oversee with the powers of direction and decision." *Id.* "[R]esponsibility for the supervision of a minor child," moreover, "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." *Id.* Because the determination of "[w]hether a person has responsibility for the supervision of a minor child . . . is a question of fact for the jury," *Anderson v. State*, 372 Md. 285, 292 (2002), we must determine whether there was sufficient evidence from which the jury could reasonably have inferred that Mr. Price had responsibility for the supervision of J.C. at any point during the sexual abuse. *See Cooksey v. State*, 359 Md. 1, 24 (2000) (holding that child sexual abuse "can be committed both by a single act and through a continuing course of conduct consisting of multiple acts.").

Here, the jury reasonably could have found that Ms. Bryant impliedly granted supervisory responsibility to Mr. Price. Ms. Bryant testified that J.C. was permitted to go to Mr. Price's house to watch television or movies, and that she expected J.C. to listen to Mr. Price if he directed her to do chores. J.C. echoed this testimony, stating when she went to Mr. Price's house without her mother, she was expected to listen to Mr. Price because he was an adult. She also helped Mr. Price with chores, as directed by him, and regularly accompanied Mr. Price on shopping trips. *See Harrison*, 198 Md. App. at 247-48 (finding an implied responsibility over the child's supervision where, among other things, the

victim's parents "assumed that [their child] would be safe in the company of an adult, and entrusted [the child] to that adult"). Indeed, a jury could reasonably infer such implied consent based on Ms. Bryant's relationship to Mr. Price and Ms. Harrison as a neighbor and caretaker, and on Mr. Price's testimony that he viewed J.C. as a stepdaughter. We therefore reject Mr. Price's contention that the evidence was insufficient for the jury to find that he assumed responsibility for J.C.'s supervision.[15]

We also reject Mr. Price's general sufficiency challenge, which is premised upon an alleged inherent incredibility in J.C.'s testimony. "Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact-finder." *Bryant v. State*, 142 Md. App. 604, 623 (2002); *see also Smiley v. State*, 138 Md. App. 709, 719 (2001) ("Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency."). The jury was free to accept those parts of J.C.'s testimony that it found credible and reject other parts. It is not the task of an appellate court to second-guess credibility assessments. *See also White v. State*, 363 Md. 150, 162 (2001) ("[I]t is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case." (quoting *McDonald v. State*, 347 Md. 452, 474 (1997))). Viewing the evidence adduced at trial and all its rational inferences

[15] To be sure, the jury also heard evidence from which it could have drawn a contrary conclusion, including evidence that Ms. Bryant did not want J.C. to be alone with Mr. Price (i.e., without Ms. Harrison also being present). But the jury was free to disregard that evidence, as it apparently did. *See Correll v. State*, 215 Md. App. 483, 502 (2013) ("It is 'the jury's task to resolve any conflicts in the evidence and assess the credibility of witnesses.' In so doing, the jury 'can accept all, some, or none of the testimony of a particular witness.'" (quoting *Allen v. State*, 158 Md. App. 194, 251 (2004))).

in the light most favorable to the State, the evidence was sufficient to sustain Mr. Price's convictions.

We will therefore (1) reverse the life sentence imposed for second-degree rape; (2) vacate Mr. Price's other sentences, consistent with *Twigg v. State*, 447 Md. 1, 27-30 & n.14 (2016), to provide the circuit court with "maximum flexibility on remand to fashion a proper sentence," so long as it does not exceed his original aggregate sentence of life plus 20 years; and (3) otherwise affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED IN PART, REVERSED IN PART, AND VACATED IN PART. LIFE SENTENCE FOR SECOND-DEGREE RAPE REVERSED; ALL OTHER SENTENCES VACATED AND CASE REMANDED FOR RESENTENCING CONSISTENT WITH THIS OPINION. CONVICTIONS OTHERWISE AFFIRMED. COSTS TO BE PAID 75% BY APPELLANT AND 25% BY WICOMICO COUNTY.