Circuit Court for Wicomico County
Case Nos. C-22-CR-22-000162 and C-22-CR-22-000235

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 350 & 779

September Term, 2023

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ORLANDO CEDRIC HILL

v.

STATE OF MARYLAND

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Wells, C.J.,
Friedman,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: January 3, 2025

*This is an unreported opinion. It 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 MD. RULE 1-104(a)(2)(B).

In this appeal, appellant Orlando Cedric Hill challenges that the Circuit Court for Wicomico County erred in ruling that at his trials for multiple counts of sexual abuse of a minor, evidence of other acts was admissible under the sexual propensity exception for the admission of other crimes evidence. For the reasons that follow, we affirm the rulings of the circuit court.

## BACKGROUND

We take our recitation of the facts from the agreed upon statement of facts that was read into the record at Hill's plea hearing on April 14, 2023:

> On February 28, 2022, Sergeant Pruitt of the Maryland State Police received a referral from the Somerset County Department of Social Services regarding a complaint of sexual abuse of a minor.
>
> The victim was identified as [J], who has a date of birth of October 20, 2003. [J] reported that her mother, identified as Qwenda Jones, and a prior boyfriend of Qwenda Jones identified as Orlando Hill, who would be identified as the Defendant, had sexually abused her in the past.
>
> It should be noted that [Hill's] date of birth is July 2nd, 1977.
>
> On March 1st, 2022, Sergeant Pruitt and Department of Social Services worker, Carolyn Terrell, responded to Sussex Central High School [to] conduct a recorded interview with [J].
>
> Pursuant to the interview [J] advised that when she was in third grade, when she was eight years of age, she lived at an address in Windsor, North Carolina, with her siblings, her mother, and [Hill].
>
> [J] stated that one night her mother took her into the bedroom shared by [Hill] and Qwenda. [Hill] was present in the bedroom; whereupon, Qwenda asked [J] if she knew what sex was and asked if she ever had sex before. Qwenda then placed [J] between herself and [Hill] on the bed and made her

perform oral sex on [Hill], in which [Hill's] penis entered into the mouth of the victim.

[J] reported that she was made to perform oral sex on [Hill] for approximately 30 to 40 minutes. [Hill] then ejaculated into [J's] mouth causing [J] to vomit.

[J] further reported that after living in North Carolina, she, her siblings, her mother, and [Hill] moved to the Salisbury, Maryland area.

[J] stated that when she was nine years of age and going into the fourth grade, she, her family, and [Hill] moved into a room at the Temple Hill Motel located at 1510 South Salisbury Boulevard in Salisbury, Wicomico County, Maryland.

[J] then described that one night at the Temple Hill Motel, she was awoken by her mother and taken into the bed of her mother and [Hill]. At the time [Hill] was lying in the bed. At trial testimony would have been received that there were at least three other children between the approximate ages of five to eleven in the same room occupied by the victim, [J], and [Hill] when the acts occurred.

[J] was then forced to perform oral sex on [Hill], in which [Hill's] penis enter into the mouth of the victim. While [J] was performing oral sex on [Hill], Qwenda likewise touched [J's] vagina and had [J] touch Qwenda's vagina.

[J] stated that she was made to perform oral sex on [Hill] for approximately 10 to 20 minutes.

Following the sexual abuse, Qwenda gave [J] an amount of U.S. currency.

[J] then reported that in the summer following fourth grade, which would be the summer of 2014 when [J] was ten years of age, she visited her mother in the residence in which Qwenda and [Hill] were residing. This residence was later identified through law enforcement investigation as 334 Barclay Street, Salisbury, Wicomico County, Maryland.

While at this residence, [J] detailed that she was in the living room of the residence when Qwenda brought her into the bedroom. [Hill] was waiting in the bedroom when [J] was brought into the room. Once [J] entered the room, Qwenda placed her in between herself and [Hill] on the bed. Once there,

> [J] was undressed and reported that [Hill] was trying to put his penis inside of her vagina.
>
> [J] described that [Hill] placed his penis against [J's] vagina, thus forcing his penis inside of her vagina. [J] reported that the act of [Hill] forcing his penis into her vagina caused her pain in her vagina.
>
> [J] described that during this time, and in order to facilitate [Hill] having sex with [J], Qwenda was rubbing her arm in an attempt to calm [J].
>
> Following [J] experiencing the vaginal pain, she was walked to the bathroom by Qwenda. While inside the bathroom, it was discovered that [J's] vagina was bleeding as a result of [Hill's] actions.
>
> Qwenda then told [J] that this is what it's like to have a period. At the time [J] believed [Hill] had cut her.
>
> On March 1st, 2022, [J] participated in a recorded one-party consent call with Qwenda under the direction and supervision of Sergeant Pruitt. During the call [J] confronted Qwenda regarding the sexual abuse she and [Hill] inflicted.
>
> During the conversation Qwenda made various acknowledgments regarding the sexual abuse and the circumstances in which it occurred.

In March 2022, Hill was charged with 11 counts related to sexual abuse of a minor for the events at the Temple Hill Motel. In a separate indictment issued in May 2022, Hill was charged with 3 counts related to sexual abuse of a minor for the events at the Barclay Street residence. Shortly after the second indictment was issued, the State filed a motion to join the cases for trial. Following a hearing on July 8, 2022, the circuit court found that the benefits of judicial economy did not outweigh the potential for prejudice if the cases were joined and denied the State's motion. At the hearing, the circuit court did not make any rulings on the admissibility of evidence at either trial.

On July 13, 2022, the State filed a notice of prior conduct, requesting that at both of Hill's trials, the court admit evidence related to the incidents that occurred in North Carolina and both incidents in Maryland under the "sexual propensity" exception to the prohibition of other crimes evidence. On August 19, 2022, the circuit court held a hearing on the State's motion in limine and granted the State's request over Hill's objection.

In November 2022, Hill was tried by a jury for the acts at the Temple Hill Motel and convicted of one count of sexual abuse of a minor, one count of second-degree sexual offense, and three counts of third-degree sexual offense. Rather than go to trial for the acts at the Barclay Street residence, in April 2023, Hill pled not guilty under an agreed statement of facts and was convicted of one count of second-degree rape. Hill was sentenced to a total of 75 years' incarceration. Hill now challenges the circuit court's rulings on the admissibility of evidence under the sexual propensity exception to the prohibition of other crimes evidence.

## DISCUSSION

Both the Maryland common law and the Maryland Rules recognize a sexual propensity exception to the general rule excluding evidence of other crimes from being admitted at trial. *Woodlin v. State*, 484 Md. 253, 266 (2023); *Vogel v. State*, 315 Md. 458, 462 (1989). Under the common law, the exception was "strictly limited to the prosecution for sexual crimes in which the prior illicit sexual acts [were] similar to the offense for which the accused [was] being tried and [involved] the same victim." *Woodlin*, 484 Md. at 266 (quoting *Vogel*, 315 Md. at 466). In 2018, the General Assembly codified

and expanded the exception to allow the introduction of evidence of other sexually assaultive behavior that was not limited by the identity of the victim, by the similarity of the act committed, or by the necessity of a conviction. *See Woodlin*, 484 Md. at 267; MARYLAND CODE, COURTS AND JUDICIAL PROCEEDINGS ARTICLE ("CJ") § 10-923. To introduce such evidence, the State must file a motion at least 90 days before trial, describing the evidence that it seeks to introduce. CJ § 10-923(c). The circuit court then must hold a hearing to determine the evidence's admissibility. CJ § 10-923(d).

At that hearing, the State must show that: "(1) the evidence is offered either to (i) prove a lack of consent or (ii) rebut an express or implied allegation that a minor victim fabricated a sexual offense, (2) the defendant had the opportunity to confront and cross-examine the witness or witnesses testifying to the sexually assaultive behavior, (3) the sexually assaultive behavior was proven by clear and convincing evidence at the required hearing, and (4) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Woodlin*, 484 Md. at 268 (citing CJ § 10-923(e)). If the State meets all four of these requirements, whether to admit the evidence is then a discretionary decision to be made by the circuit court. *Woodlin*, 484 Md. at 268.

Here, the State filed the necessary motion on July 13, 2022, and the circuit court held a hearing on August 19, 2022. At the hearing, Hill did not dispute that the evidence qualified as "sexual propensity" evidence, but argued that the other acts were not proven

by clear and convincing evidence and that the probative value of the evidence was outweighed by the risk of unfair prejudice.[1]

To establish the other acts, the State offered into evidence two exhibits. The first exhibit was a summary of the interview of the victim, in which she described all three incidents. The second exbibit was a summary of the police interview of Qwenda Jones, whom the State planned to call as a witness. During that interview, Qwenda told investigators that in regard to the events in North Carolina, she recalled that Hill had pointed a handgun at her head and told her to go into the bathroom and stay there while he was left alone with J. Qwenda recalled that when she came out of the bathroom, J was crying and would not talk about what happened. In regard to the events at the Temple Hill Motel, Qwenda recalled that she was staying there with her children and one night she woke up and found Hill sitting on the side of the bed and J was lying next to her in the bed.

[1] In its motion, the State relied on the common law exception described in *Vogel v. State*, 315 Md. 458 (1989), and the parties' arguments on the motion and the circuit court's ruling mirrored the grounds relied upon in State's motion. On appeal, Hill asserts that there was a "tacit agreement" between the circuit court, the State, and the defense that CJ § 10-923 did not apply because it was enacted after the acts for which Hill was on trial and was thus subject to *ex post facto* limitations. There is no indication in the record that there was any such understanding between the parties and the circuit court. Rather, it appears that because the sexual propensity evidence being offered fit within the common law exception established in *Vogel*, there was no need to refer to CJ § 10-923. We note, however, that if there had been any such agreement, it would have been erroneous. Procedural laws are only considered *ex post facto* if they affect a substantial right, such as changing the "the quantum of evidence necessary to sustain a conviction." *Wyatt v. State*, 149 Md. App. 554, 569 (2003). Retrospective application of a statute or rule that relates only to the admissibility of evidence such as such as CJ § 10-923, which allows the admission of evidence that was previously inadmissible, is not unconstitutional. *See Langston v. Riffe*, 359 Md. 396, 406-07 (2000); *Wyatt*, 149 Md. App. at 564 (citing *Thompson v. Missouri*, 171 U.S. 380, 386-88 (1898)).

Qwenda said that the way J was acting made her think that some sort of sexual abuse had happened, but J wouldn't tell her anything. Qwenda stated that the abuse J described probably could have happened, but she did not remember because she was on a three-to-four-day binge of crack and heroin at the time. With regard to the events at the Barclay Street residence, Qwenda stated that Hill did not live with her but would come to sell her drugs. She remembered that on one occasion her kids were dropped off to visit and stay the night, and on that same night Hill had come over to drop off drugs. In the morning, J called her into the bathroom because she was bleeding from her vagina. Qwenda had J get into the shower and told J that was what it was like to start her period. Qwenda stated that she didn't think anything else of it at the time and that she didn't remember J being in the bed with her and Hill. She stated that if anything had happened, she was on drugs or sleeping medication at the time.

At the conclusion of the hearing, the circuit court found that the other acts were shown by clear and convincing evidence, and that the probative value outweighed the risk of unfair prejudice to Hill. The circuit court then ruled that the other acts evidence was admissible at both of Hill's trials.

Because Hill does not dispute that the offered evidence qualified as sexual propensity evidence, we first address whether the court erred in finding that the allegations were proven by clear and convincing evidence, and second, whether the court erred in finding that the probative value of the evidence outweighed the risk of unfair prejudice to

Hill.[2] We will then review whether, based on those factors, the circuit court abused its discretion in admitting the evidence.[3]

## I. CLEAR AND CONVINCING EVIDENCE

We first address Hill's argument that the other acts were not proven by clear and convincing evidence. In support of this argument, Hill asserts that in Qwenda's statement,

[2] The State argues that Hill waived any challenge to the admission of the sexual propensity evidence at his jury trial because, when the evidence was offered, he stated during a bench conference that he would withdraw his objection. Hill asserts that his statement at trial that he would withdraw his objection referred only to making a new objection, not to the issue that he had preserved at the pre-trial hearing. *See Huggins v. State*, 479 Md. 433, 450-51 (2022) (explaining that when an evidentiary issue has been conclusively resolved and preserved for appeal pre-trial, a statement of "no objection" at trial could be understood to mean that "that the defendant is merely *not* asking to exclude the evidence on some *other* ground") (emphasis in original). For purposes of this appeal, however, we need not resolve this dispute. When Hill proceeded under an agreed statement of facts, it was specifically noted that "[h]ad this matter proceeded to a contested trial, [Hill] would have renewed his objection to the admissibility of that evidence." The reciprocal objection to the same pre-trial ruling was therefore preserved as part of Hill's plea of not guilty on an agreed statement of facts. *See Ward v. State*, 52 Md. App. 664, 672 (1982) (noting that a not guilty plea with an agreed statement of facts can be used "for the purpose of preserving for appellate review the propriety of the admission of certain evidence"). Thus, the question is properly before us.

[3] Hill spends much of his brief arguing that because the reciprocal admission of evidence "in effect" granted the State's pre-trial motion for joinder, we should review the circuit court's ruling without deference as a question of joinder/severance, not as an evidentiary question reviewed for an abuse of discretion. Although there is some substantive overlap between the questions of joinder and the admissibility of evidence—that is, both consider whether a defendant will be unfairly prejudiced by the admission of certain evidence—they are procedurally quite different. As this Court has explained, "[w]e need carefully to compartmentalize the procedural issue of joinder/severance from the evidentiary issue of the admissibility of 'other crimes' evidence. They are not the same. They call for different analyses. The applicability of one to the question at hand does not imply the applicability of the other." *Solomon v. State*, 101 Md. App. 331, 335 (1994). Here, there is no question that there were separate proceedings for each indictment. The circuit court addressed the procedural question of joinder separate from the admissibility of the evidence, and we shall do the same.

she only said that the events described by the victim were possible, but did not go so far as to say that they were probable. Hill insists that the circuit court should have required a more solid foundation than that.[4] We disagree.

Clear and convincing evidence is an intermediate standard, "more than a preponderance of the evidence and less than evidence beyond a reasonable doubt." *Vogel*, 315 Md. at 470. Thus, the other acts "need not be established with absolute certainty," and some degree of conflicting evidence "does not preclude the trial judge from being satisfied that it is nonetheless clear and convincing." *Vogel*, 315 Md. at 471.

In making its ruling, the circuit court acknowledged that Qwenda's statement was somewhat inconsistent and unclear, and attributed that to Qwenda's heavy use of heroin during the time period in which the events occurred. Despite those problems, the court found that Qwenda's statement and the victim's statement were "fairly consistent in terms of what allegedly occurred, the nature of what occurred, sort of a consistency in the nature in which these things occurred, the locations where they occurred, enough so that the Court

[4] With regard to the incident in North Carolina, Hill also reasoned that because the allegations were referred to law enforcement authorities there and no charges were ever filed, that must mean that there was not enough evidence and thus, there could not be clear and convincing evidence to support admission. The circuit court was not persuaded, and neither are we. What evidence may or may not be available or persuasive to authorities in another state has no bearing on the weight of evidence in front of a circuit court here in Maryland. Moreover, we note that the sexual propensity exception for other acts need not have yielded a criminal conviction to be admissible. *See Woodlin*, 484 Md. at 267; CJ § 10-923. Thus, whether Hill will face criminal charges in North Carolina has no bearing on the case in front of us.

finds that [Hill's] involvement, at least … for the purposes of the admission, is established by clear and convincing evidence."

The sexual propensity exception to other crimes evidence recognizes that "many sexual assault offenses occur in private and may not generate any physical evidence." *Woodlin*, 484 Md. at 262. Often, the only available evidence is the testimony of the complaining witness, which alone can provide clear and convincing evidence to support admission of other acts showing sexual propensity if the circuit court finds it to be credible. *See id.* at 289. Here, not only did the circuit court have J's statement, but Qwenda's statement corroborated many of the surrounding circumstances described by the victim. Considering the evidence available, we cannot say that it was an abuse of discretion for the circuit court to find that the other acts were shown by clear and convincing evidence.

## II. PROBATIVE VALUE VERSUS UNFAIR PREJUDICE

We next address Hill's argument that it would be unfairly prejudicial for a jury to hear "a similar series of evidentiary points" because it would cause them to develop "latent hostility towards any defendant." We are not persuaded.

Relevant evidence is not excluded "merely because it is prejudicial, as '[a]ll evidence, by its nature, is prejudicial.'" *Woodlin*, 484 Md. at 265 (quoting *Williams v. State*, 457 Md. 551, 572 (2018)). For evidence to be excluded, it must be unfairly prejudicial such that it "tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission." *Woodlin*, 484 Md. at 265 (cleaned up) (quoting *Montague v. State*, 471 Md. 657, 674 (2020)).

In making its ruling on whether the probative value of the other acts evidence outweighed the risk of unfair prejudice, the circuit court explained that the evidence was "highly probative … as to what occurred to an alleged minor victim, the nature of how it occurred, [and] the ongoing course … of conduct of what had occurred to her." The court then found that the highly probative nature of the evidence outweighed any prejudicial effect. We cannot say that this decision was by any means an abuse of discretion.

## III. CONCLUSION

If the State satisfies all of the conditions for the admission of sexual propensity evidence, whether to admit the evidence is a discretionary decision for the circuit court to make. *Woodlin*, 484 Md. at 268-69. There are no specific factors that the circuit court is required to consider in making this determination. *Id*. at 278. Rather, the circuit court has wide discretion to determine what factors are relevant and applicable to the particular circumstances of the case. *Id*. at 282-83.

Here, having determined that the evidence was highly probative, the circuit court focused on the victim's need to effectively testify about what she experienced. Specifically, the circuit court found that "it would be very difficult … to parse it out for the alleged victim in this case who was a minor at the time." Thus, the circuit court ruled that the evidence would be admitted at both trials.

For the circuit court's ruling to have been an abuse of discretion, we would have to find that it "was so far removed from any center mark … that it places that decision beyond the fringe of what we deem minimally acceptable." *Woodlin*, 484 Md. at 292-93 (cleaned

up). This we cannot do. The victim's testimony was clear and consistent, and many of the surrounding details were corroborated by Qwenda's interview with the police. The acts were in close temporal proximity, each occurring about a year apart, and were similar in nature. The evidence was thus highly probative, and the circuit court concluded that it would be difficult for the victim to tell her story if she had to leave out significant parts of it each time she testified. Under the circumstances, we cannot say that admission of sexual propensity other crimes evidence was an abuse of discretion.

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