Circuit Court for Wicomico County
Case No. C-22-CR-20-000151

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1716

September Term, 2021

MICHAEL NICHOLAS VILLA

v.

STATE OF MARYLAND

Reed,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: August 22, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Appellant—Michael Nicholas Villa—was convicted by a jury in the Circuit Court for Wicomico County of one count of sexual abuse of a minor and three counts of conducting unlawful visual surveillance with prurient interest. A sexual abuse of a minor conviction requires the person committing the abuse to be a parent or other person with permanent or temporary care or custody or responsibility for the supervision of the minor, or a household member or family member. Md. Code (2002, 2021 Repl. Vol.), Crim. Law ("CL") § 3-602.

The case against Villa involved videos discovered on his cell phone recording the underwear area beneath a child's dress in the home where Villa resided. Before trial, the State moved to allow the admission of a video shot on Villa's cell phone that filmed underneath an unidentified woman's skirt in a garden center a few months after the videos taken of the child. Villa opposed. The motions court granted the State's motion, and the video was introduced and played at trial.

Villa was sentenced to a total of 28 years in prison. He now appeals the motion court's admission of the video of the woman in the garden center and the legal sufficiency of the evidence to support his conviction for sexual abuse of a minor.

This appeal requires us to answer two questions[1]:

1. Was the video shot under the woman's skirt at the garden center relevant, and if so, was its probative value substantially outweighed by undue prejudice?

[1] Villa stated the questions presented as "1. Did the trial court err in admitting irrelevant evidence?" and "2. Was the evidence legally insufficient?"

2. Was the evidence presented at trial legally sufficient to find that Villa had temporary care or custody or responsibility for the supervision of the minor?

We conclude that the admitted evidence was relevant, and its probative value was not substantially outweighed by unfair prejudice. We also conclude that the evidence was legally sufficient to establish that Villa had temporary responsibility for the supervision of the minor. Accordingly, we shall affirm the Circuit Court for Wicomico County.

FACTS & PROCEDURAL HISTORY

Villa lived in a house with George G.[2] Before Villa moved into George's house, George's daughter, Crystal G.,[3] and Crystal's three daughters lived there. After Crystal and her daughters moved out, they would visit regularly, often after church on Sundays. During their visits, they would fish in the pond, do laundry, and socialize. Villa was often present during these visits and would interact with Crystal's daughters.

On January 28, 2020, police seized Villa's cell phones[4] and extracted data from them. This led to the discovery of videos taken by Villa filming underneath the dress of

The State framed the questions as "1. Did the court properly exercise its discretion in admitting relevant evidence of intent and knowledge?" and "2. Was the evidence legally sufficient to convict Villa of sexual abuse of a minor?"

[2] George's son and daughter-in-law also lived with George and Villa.

[3] For clarity, we refer throughout the opinion George and Crystal G. by their first names, intending no familiarity or disrespect.

[4] The record reveals that Villa had four cell phones that were seized.

one of Crystal's daughters while at George's house. Villa was then charged on a 26-count indictment that included the charges now at issue on appeal.

Before trial, the State moved to have admitted a video from Villa's phone involving another person at a different location. The video filmed underneath an unidentified woman's skirt at a garden center. The State argued that this video was admissible to show Villa's knowledge and intent regarding the current charges. The State anticipated that Villa's defense would be that he had accidentally taken video of the child's underwear and argued that this other video would demonstrate that the filming was intentional. Villa objected, arguing that the video was not relevant and that it was not clear Villa was the one doing the filming. He pointed out that the video was in a completely different location and captured a different person than the videos for which he was on trial. He also argued that it was "dangerously more prejudicial given the nature of the charges" against Villa. Finally, he asserted that the State was "bringing this in solely as propensity evidence to indicate that [Villa] acted in conformity therewith in order to bolster their case." The motions court agreed with the State, ruling that "[t]he [c]ourt believe[d] that it would be relevant, and it would go to the Defendant's intent. So the [c]ourt will rule that it is proper evidence."

At Villa's trial, the State showed the jury several still images and played several video files that had been extracted. Specifically, the State introduced and played the following five videos:

1. Video file ending in 0992, dated September 23, 2018, capturing the underwear underneath one of Crystal's daughter's dresses;

2. Video file ending in 1087, dated September 23, 2018, capturing the same;

3. Video file ending in 5557, dated September, 23, 2018, capturing the same;

4. Video file ending in 6096, dated September 30, 2018, capturing Villa talking to one of Crystal's daughters as she played a video game;

5. Video file ending in 6620, dated October 7, 2018, capturing Villa talking with one of Crystal's daughters in the kitchen.

The State also introduced the video filming under the skirt of the unidentified woman's skirt at the garden center, which was dated June 21, 2019.

Regarding the garden center video, the trial court instructed the jury about the limited purpose of the evidence:

> You have heard evidence that the Defendant committed the bad act of videotaping a woman in a garden center, which is not a charge in this case. You may consider this evidence only on the question of intent and knowledge. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the Defendant is of bad character or has a tendency to commit crime.

During deliberations, the jury sent the trial court a note requesting clarity on the concept of "temporary responsibility." The trial court responded that "[a] person who has responsibility for the supervision of a child is one who enters into an express or implied mutually consensual arrangement with one who is legally charged with the care of the child

for the purpose of transferring, temporarily or permanently, the parental responsibility." The court further provided that "[t]his is a factual determination to be made by the jury."

The jury convicted Villa of one count of sexual abuse of a minor and three counts of conducting visual surveillance with prurient interest. He was sentenced to 25 years' imprisonment for the sexual abuse of a minor conviction, and consecutive one-year sentences for each count of unlawful visual surveillance, totaling a prison sentence of 28 years. He now appeals.

STANDARD OF REVIEW

We consider whether evidence is "legally relevant" for legal error under a *de novo* standard of review. *State v. Simms*, 420 Md. 705, 725 (2011). We review whether the probative value of evidence is outweighed by the danger of unfair prejudice for abuse of discretion. *Id.* "The standard of review for legal sufficiency in a criminal case is whether, on the evidence adduced at trial, viewed in the light most favorable to the State as the prevailing party, any reasonable juror could find the elements of the crime charged beyond a reasonable doubt." *Sequeira v. State*, 250 Md. App. 161, 203 (2021).

RELEVANCE & PREJUDICIAL EFFECT

Parties' Contentions

Villa argues that the trial court erred in admitting the video filming the unidentified woman in the garden center. He claims that the video was irrelevant because it differed from the videos for which he was charged in that the garden center video captured an adult woman in a different location and at a time too far removed to be connected to his charges.

Alternatively, he argues that it was far more prejudicial than probative. Specifically, he asserts that the video's admission violated Maryland Rule 5-404(b), which prohibits the admission of "[e]vidence of other crimes, wrongs, or other acts . . . to prove the character of a person in order to show" that the accused acted in conformity with that character. He also claims the trial court erred in not articulating its reasons for admission on the record, aside from its generalized finding that the video "would go to the Defendant's intent."

The State responds that the video was relevant to show Villa's intent and knowledge because Maryland Rule 5-404(b) allows other crimes evidence to be admitted for the purpose of showing intent and knowledge. It argues that intent was relevant because the State had to show that Villa acted with prurient intent, that he intentionally filmed the minor's private area, and that the filming was done deliberately. In the State's view, the garden center video would counteract Villa's anticipated defense that he filmed the child's private area accidentally because it was a clearer demonstration of Villa's inappropriate filming. In addition, the State argues that the court was not required to put every step of its reasoning on the record. Finally, the State insists any error would be harmless.[5]

Court's Failure To Put Reasoning On The Record

We first address Villa's argument that the trial court erred by not putting its reasoning for admitting the garden center video on the record. He correctly notes that the

[5] Finding no error in the admission of the garden center video, we do not address the harmless error arguments.

test for admission of evidence governed by Maryland Rule 5-404(b) is laid out by our state Supreme Court[6] in *State v. Faulkner*:

> When a trial court is faced with the need to decide whether to admit evidence of another crime—that is, evidence that relates to an offense separate from that for which the defendant is presently on trial—it first determines whether the evidence fits within one or more of the *Ross* exceptions.

314 Md. 630, 634 (1989). These exceptions are evidence having a tendency "to establish motive, intent, absence of mistake, a common scheme or plan, identity, opportunity, preparation, knowledge, absence of mistake or accident." *Id.* (citing *Ross v. State*, 276 Md. 664, 669-70 (1976)). The Court continued,

> If one or more of the exceptions applies, the next step is to decide whether the accused involvement in the other crimes is established by clear and convincing evidence. We will review this decision to determine whether the evidence was sufficient to support the trial judge's finding.
>
> If this requirement is met, the trial court proceeds to the final step. The necessity for and probative value of the "other crimes" evidence is to be carefully weighed against any undue prejudice likely to result from its admission. This segment of the analysis implicates the trial court's discretion.

Id. at 634-35 (internal citations omitted). Our Supreme Court has also said that "should the trial court allow the admission of other crimes evidence, it should state its reasons for

[6] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* Md. Rule 1-101.1(a).

doing so in the record so as to enable a reviewing court to assess whether Md. Rule 5-404(b) . . . has been applied correctly." *Streater v. State*, 352 Md. 800, 810 (1999).

Villa asserts that "the trial court did not articulate the reasons for its generalized determination that the video" went to his intent, "did not make a finding on the record that the State proved [he] was responsible for the conduct by clear and convincing evidence[,]" and "failed to engage in the requisite balancing of probative value versus prejudice, let alone place those reasons on the record."

This Court recently considered a similar argument in *Colkley v. State*, 251 Md. App. 243, 271-72 (2021). The defendant in that case argued that the trial court erred in allowing testimony that implicated him in other murders and, specifically, that the court failed to follow—on the record—the three-step *Faulkner* test. *Id.* This Court first emphasized that the trial court was aware of what bad acts the testimony would reveal. *Id.* at 275. It then reiterated the "strong presumption that judges properly perform their duties." *Id.* (quoting *Darling v. State*, 232 Md. App. 430, 463 (2017)). Thus, "the fact that the record does not reflect whether a trial court conducted a Rule 5-404 balancing test does not mean the court did not do so." *Id.* (cleaned up). This Court concluded that "the record indicate[d] that the trial court fully considered Appellant's motion[,]" *id.*, and "did not abuse its discretion by failing to articulate its specific reasoning for denying Appellant's motion[,]" *id.* at 276.

In this case, the trial court was likewise aware of what the garden center video would show. Indeed, the court had reviewed the video and listened to counsel's arguments before ruling that it would go to Villa's intent. In the motions hearing, the State argued that it was

clear the phone belonged to and was used by Villa because videos taken between the time of the crimes and the garden center video showed Villa's face, and that the garden center video demonstrated that the videos were taken intentionally underneath of clothing and would rebut the defense's argument that the filming of the children was accidental. Villa argued that it was not clear that he was the one filming in the garden center and that the video constituted propensity evidence and was not relevant. Before the court viewed the video, Villa also argued that it was "dangerously prejudicial given the nature of the charges[.]" The trial court had all of these arguments on Rule 5-404(b) when making its determination that the video was relevant for intent.

"A trial court is presumed to know the law and apply it properly." *Wisneski v. State*, 169 Md. App. 527, 555 (2006). We see nothing in the record to indicate that the trial court failed to follow the law on admitting Rule 5-404(b) evidence as outlined in *Faulkner*. It determined the purpose of the evidence—intent—and heard arguments on the likelihood of Villa's involvement with the garden center video and its prejudicial effect. Nothing indicates that the trial court abused its discretion by failing to consider the requisite factors for admission of the evidence.

Rules of Relevance

Evidence is relevant if it "ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Md. Rule 5-401. Relevant evidence is generally admissible, Md. Rule 5-402, but "may be excluded if its probative value is substantially outweighed by the

danger of unfair prejudice," Md. Rule 5-403. On the other hand, irrelevant evidence is not admissible. Md. Rule 5-402. Furthermore, Maryland Rule 5-404(b) governs evidence of other crimes, wrongs, or acts:

> Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

In other words, "evidence of a defendant's prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial" but may be admitted if relevant to an issue aside from the defendant's propensity to crime or criminal character. *Faulkner*, 314 Md. at 633-34 (citations omitted).

Md. Rule 5-404(b) Evidence – Relevance

Despite the general rule of exclusion in Rule 5-404(b), "[e]vidence of other crimes may be admitted . . . if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *Id.* at 634. Accordingly, "there are numerous exceptions to the general rule that other crimes evidence must be suppressed." *Id.* That it tends to establish a defendant's intent is among such exceptions. *Id.*

Under Maryland Rule 5-404(b), evidence is not admissible if its only relevance is tending to show that the accused had the propensity to commit the crime alleged. The relevance of the evidence must have another purpose, such as showing the defendant's

"motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident." Md. Rule 5-404(b).

Villa argues that the garden center video is "irrelevant because it was of an adult person in a place unrelated to this case and was too far removed in time to be connected to these events." As such, it was "far too speculative" to demonstrate Villa's intent or knowledge. The State counters that the video was relevant to show Villa's intent and knowledge. It maintained that Villa's intent while filming a private area was a critical issue in the case, making evidence of intent material to a fact of consequence.

To be admissible, it is "not enough that the evidence of other crimes, wrongs, or acts 'be technically or minimally relevant to some formal issue in the case[.]'" *Lewin Realty III, Inc. v. Brooks*, 138 Md. App. 244, 269 (2001) (quoting *Emory v. State*, 101 Md. App. 585, 602 (1994), *cert. denied* 337 Md. 90 (1995)). Instead, "the relevance [must] be *substantial*" and pertain "to a *genuinely contested issue* in the case." *Id.* (internal citation marks omitted).

The State correctly points out that intent was an important and contested issue in the case. The State argued to the jury that "the intent in the . . . videos is pretty obvious." Regarding the garden center video, the State asserted that "[t]hat [video] is really just used for the purpose of showing the intent[,]" arguing that the videos of the children were not as obvious as the garden center video. Villa likewise argued the issue of intent: "What did Michael Nicholas Villa intend? I don't know, you['ve] got to guess."

The court instructed the jury that

> [i]ntent is a state of mind and ordinarily cannot be proved directly because there is no way of looking into a person's mind. Therefore, a Defendant's intent may be shown by surrounding circumstances. In determining the Defendant's intent you may consider the Defendant's acts as well as the surrounding circumstances. Further you may, but are not required to, infer that a person ordinarily intends the natural and probable consequences of his acts and/or omissions.

The court further instructed that

> [i]n order to convict the Defendant of private place prurient interest, the State must prove that the Defendant did, with prurient intent, conduct visual surveillance of the private area of an individual by use of camera without the consent of the individual under circumstances in which a reasonable person would believe that the private area of the individual would not be visible to the public[.]

Moreover, the court defined visual surveillance as "the deliberate surreptitious observation of an individual by any means" and qualified that it "does not include casual, momentary or unintentional observation of an individual." Thus, based on the parties' arguments and the court's instructions, it is clear that intent was a "genuinely contested issue" in this case.

Because one of the issues in the case involved whether Villa intentionally—as opposed to accidentally—filmed the child's underwear, the garden center video addressed that issue by showing another instance where Villa had filmed under a person's clothing, thereby tending to show that the filming of the child's underwear was intentional and not accidental. *Cf. Collins v. State*, 164 Md. App. 582, 610 (2005) (allowing evidence of prior assault against the mother of a sexual abuse victim where defendant had "made one of the contested issues in the case why [she] waited to report the prior incidents of sexual abuse");

Fisher v. State, 128 Md. App. 79, 147-148 (1999), *aff'd and vacated in part*, 367 Md. 218 (2001) (allowing evidence of mother's prior abusive discipline where intent to harm was an issue in the case); *Taylor v. State*, 347 Md. 363, 372-73 (1997) (allowing evidence of "other brutality" by stepfather where "intent to commit physical injury" was an issue in a child abuse case).

Evidence of intent "is admissible, even if not directly concurrent, when the subject acts are obviously connected to the charge." *Urbanski v. State*, 256 Md. App. 414, 438 (2022). In affirming the admission of racially offensive memes and the defendant's membership in a white supremacist Facebook page in a first-degree murder trial, this Court explained the connection between intent evidence and elements of the offense:

> Appellant was charged with first-degree murder and the State had to prove the willful, deliberate, and premediated nature of Appellant's actions. The memes depicted violence against Black people like [the victim]. . . . [T]his Court holds that the contested evidence to show motive or intent to harm [the victim] was highly probative and has special relevance to [the murder charge].

Id. at 438-39. The Court also explained why evidence of other bad acts can be especially relevant when intent is an issue: "An intent to kill often must be proved by circumstantial evidence and found by inference. Absent an admission by the accused, it rarely can be proved directly." *Id.* at 437 (quoting *Burch v. State*, 346 Md. 253, 273 (1997)).

The same is true in this case. As we have explained, intent was a contested issue in the case against Villa. Villa did not admit to intentionally filming under the child's clothing. The jury would have to find the element of intent by inference. Evidence of

another time when Villa filmed underneath a person's clothing would make it more likely that the filming underneath clothing was an intentional act. It would also tend to disprove an inference that the captured videos of the children were filmed accidentally.

Because the garden center video tended to bear on the defendant's intent, and intent was a contested issue in the case, the circuit court did not err in determining that the video was relevant evidence of Villa's intent.

Unfair Prejudice

The last step in the *Faulkner* analysis[7] for the admission of evidence under Rule 5-404(b) requires the court to "carefully weigh[]" the "necessity for and the probative value of" the evidence "against any undue prejudice likely to result from its admission." *Faulkner*, 314 Md. at 635. "To some degree, all evidence admitted under Maryland Rule 5-404(b) is prejudicial. Therefore, the third *Faulkner* prong requires the trial court to engage in a Rule 5-403 balancing." *Cousar v. State*, 198 Md. App. 486, 516 (2011). Under Rule 5-403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

[7] Although Villa argued at the motions hearing that the State had not proved he was the one filming the garden center video, he made no argument on appeal that the State had not shown his involvement with the video by clear and convincing evidence. Thus, we do not substantively address this second prong of the *Faulkner* three-part analysis for trial judges.

Villa contends that "[i]t is obviously confusing or misleading to a jury, and prejudicial for the defendant, when evidence of a video of a purportedly similar nature, yet involving a person and placed wholly unrelated to the crimes charged is admitted." He also argues that its admission "leaves the indelible impression on a jury that the defendant has the propensity for such conduct, generally."

We disagree that admission of the garden center video was confusing or misleading to a jury. In closing, the State explained the exact purpose of the garden center video:

> The other video that was shown, the video from the garden center . . . . That one is really just used for the purpose of showing intent. So videos of the girls was done differently because he's in a home, he's in close quarters, there's other people around, so it's obviously not as obvious as the one at the garden center. So it's really to show that that was his intent in doing so.

The trial court likewise explained the video's purpose in its instructions to the jury:

> You have heard evidence the Defendant committed the bad act of videotaping a woman in a garden center, which is not a charge in this case. You may consider this evidence only on the question of intent and knowledge. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the Defendant is of bad character or has a tendency to commit crime.

It is apparent from the State's position and the court's instruction that the jury was informed of the purpose of the garden center video—to show that Villa acted intentionally. We do not see how its admission was confusing to the jury which was informed to consider the video as evidence of Villa's intent.

"In determining whether to admit evidence under Rule 5-404(b), a court 'must carefully weigh the necessity for and probativeness of the evidence concerning the

collateral criminal [or bad] act against the untoward prejudice which is likely to be the consequence of its admission.'" *Thompson v. State*, 181 Md. App. 74, 92 (2008) (quoting *Cross v. State*, 282 Md. 468, 474 (1978)). As we have said, at the motions hearing, the court had before it Villa's objection that the garden center video was "dangerously prejudicial given the nature of the charges[.]" Again, we presume that the trial court "know[s] the law"—including the standard for weighing the probative value against unfair prejudice—"and appl[ies] it properly." *See Wisneski*, 169 Md. App. at 555. We see nothing to support the conclusion that the trial court abused its discretion in admitting the garden center video on the basis of unfair prejudice.

"[W]here a primary issue is the culpable state of mind of the defendant, any chance of prejudice by virtue of the admission of prior bad acts is less than if the primary issue is identity of the perpetrator." *Taylor*, 347 Md. at 372. The issue in this case involved Villa's intent in filming the children. Without an admission from Villa, there was no evidence aside from the videos of the children themselves from which the jury could infer his intent. Therefore, the additional video from the garden center was an especially probative piece of evidence that could speak to the intentionality of Villa's conduct. The probative value of evidence of intent is less likely to be outweighed by unfair prejudice than other types of Rule 5-404(b) evidence, *see id.*, especially because intent can rarely be proved directly and almost always requires the jury to find it by inference, *see Urbanski*, 256 Md. App. at 437.

The garden center video was admitted as evidence of intent, not evidence of Villa's propensity to commit crime. "[The evidence] was not introduced to prove appellant's . . .

criminal nature. Indeed, the State never argued or even suggested, either expressly or impliedly that [the evidence] was evidence of appellant's . . . character and therefore evidence that he committed [the crime charged]." *Ridgeway v. State*, 140 Md. App. 49, 68 (2001).

"Evidence is prejudicial when it tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission." *Smith v. State*, 218 Md. App. 689, 705 (2014) (quoting *Hannah v. State*, 420 Md. 339, 347 (2011)). "The more probative the [disputed] evidence . . . . 'the less likely it is that the evidence will be unfairly prejudicial.'" *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). As explained, the probative value of evidence indicating a defendant's intent is especially probative. In this case, the similarities between the garden center video and the videos of the children demonstrate intentionality. Both involve covertly filming underneath of clothing. The presence of the videos on Villa's phone makes it less likely that the filming of the children was accidental and more likely that it was purposeful. Therefore, the garden center video was highly probative of Villa's intent.

Although all Rule 5-404(b) evidence tends to be prejudicial, the unfairness we are to consider is "the tendency of the evidence to prove that the defendant was a 'bad man.'" *Cousar*, 198 Md. App. at 516 (quoting *Hyman v. State*, 158 Md. App. 618, 628 (2004)). We do not think any prejudice against Villa was unfair. The conduct in the garden center video was akin to conduct in the videos of the child for which he was charged. Thus, its admission did not insert a new or different bad behavior into the trial for the jury's

consideration. We likewise reiterate the limiting instruction gave to the jury: "You may consider this evidence only on the question of intent and knowledge. However, you may not consider this evidence for any other purpose. Specifically, you may not consider it as evidence that the Defendant is of bad character or has a tendency to commit crime." Given the especially probative nature of the garden center video, we see no abuse of discretion by the trial court on the basis of unfair prejudice.

SUFFICIENCY OF EVIDENCE

Parties' Contentions

Villa argues that the evidence was legally insufficient to support his conviction for sexual abuse of a minor. The sexual abuse of a minor charge prohibits sexual abuse by "[a] household member of family member" or "[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor[.]" CL § 3-602(b). The State proceeded against Villa on the theory that he had "temporary care or custody or responsibility for the supervision of a minor[.]" CL § 3-602(b). Villa insists that the evidence did not show that he had temporary care, custody, or responsibility because he had no parental duties, George and Crystal did not grant or impose responsibility on him, and he did not accept responsibility for the children. He points to Crystal's testimony that the children always interacted with Villa within Crystal's sight and to George's testimony that he never asked Villa to watch the children and that Villa was not supervising them, as well as certain videos that were introduced showing Crystal and George present on the day Villa filmed the private area of one of the children.

The State maintains that the evidence was sufficient to show that Villa had responsibility for the minor children. The State points to the following evidence and inferences therefrom in support: Villa lived at the George's home at the time of the filming; Villa was present when Crystal and the children would visit; Villa would interact with the children; George testified that he would sometimes sleep during the visits and that the children were sometimes left alone with Villa while George was fishing; Crystal testified she would leave the children at the house while she went out to the store; and the videos showing the children alone with Villa without the supervision of Crystal or George. Despite Crystal and George's testimonies that Villa was never given permission to supervise the children, that State argues that the videos showing Villa alone with the children show that he was given temporary responsibility over them.

Discussion

Villa could not be convicted of sexual abuse of a minor unless he was a "person who ha[d] permanent or temporary care or custody or responsibility for the supervision of a minor" or "[a] household member or family member[.]" CL § 3-602(b). The State's theory implicated the former.

The statutory prohibition against sexual abuse of a minor applies more broadly than "to those who ha[ve] been awarded custody or control by court order[.]" *Pope v. State*, 284 Md. 309, 321 (1979) (quoting *Bowers v. State*, 283 Md. 115, 130 (1978)). Someone with "responsibility for the supervision of" a child is different than someone with "temporary care or custody." *Id.* at 322-23. The latter has been interpreted as meaning

those "who stand in loco parentis to a child" and requires an intent to establish such status. *Id.* at 322.

The Supreme Court explained the "responsibility" and "supervision" components of the statute in *Pope*:

> The child abuse statute speaks in terms of a person who "has" responsibility for the supervision of a minor child. It does not prescribe how such responsibility attaches or what "responsibility" and "supervision" encompass. . . . *Bowers* equates "permanent or temporary care or custody" with "in loco parentis," but "responsibility for the supervision of" is not bound by certain of the strictures required for one to stand in place of or instead of the parent.
>
> * * *
>
> A person may have the responsibility for the supervision of a minor child . . . although not standing in loco parentis to that child. *"Responsibility"* in its common and generally accepted meaning denotes *"accountability,"* and *"supervision"* emphasizes *broad authority to oversee* with the powers of direction and decision.

Id. at 322-23 (internal citations omitted) (emphasis added).

"[R]esponsibility for supervision of a minor child may be obtained only upon the mutual consent, express or implied, by the one legally charged with the care of the child and by the one assuming the responsibility." *Id.* at 323. That is, a parent cannot unilaterally impose such responsibility on a third person, and a third person cannot unilaterally assume it either. *Id.* at 323-24. As an example, "a babysitter temporarily has responsibility for the supervision of a child; the parent grants the responsibility for the period they are not at home, and the sitter accepts it." *Id.* at 324. Although responsibility cannot begin

unilaterally, "it may be terminated unilaterally by a parent by resuming responsibility, expressly or by conduct[,]" without the consent of the third party. *Id.*

In arguing that the evidence was legally insufficient for the jury to determine that Villa had responsibility for the supervision of the children, he relies on the video evidence which indicated that George and Crystal were present in the home during the filming of the children and testimony by George and Crystal. George testified that he never asked Villa to babysit the girls, that Crystal never told him Villa was in charge of them, and that Villa was not supervising them. Crystal testified that she never asked Villa to supervise them, that the children's interactions with Villa were always within her sight, and that they were never alone with Villa.

"[T]he issue of whether a person has responsibility for the supervision of a minor is a question of fact for the jury to determine." *Harrison v. State*, 198 Md. App. 236, 243 (2011). As such, we give deference to all reasonable inferences of the fact-finder and its ultimate resolution of this issue. *Id.* at 242-43.

Our appellate courts have considered whether various scenarios satisfied the "responsibility for supervision of" criterion. The appellant in *Pope* was charged with child abuse after a three-month-old child died from injuries inflicted by his mother at the appellant's home and in the appellant's presence. *Pope*, 284 Md. at 313. Despite the fact that the appellant had periodically cared for the child, the Court determined that she did not have responsibility for the supervision of the child because "the mother was always present[,]" the appellant "had no right to usurp the role of the mother even to the extent of

responsibility for the child's supervision[,]" and "the mother's acquiescence in [the appellant's] conduct was not a grant of responsibility . . . for the supervision of the child, nor was [the appellant's] conduct an acceptance of such responsibility." *Id.* at 329-30.

In *Newman v. State*, the appellant who sexually abused a thirteen-year-old babysitter hired by the appellant's girlfriend was considered responsible for the supervision of the babysitter. 65 Md. App. 85, 98-99 (1985). This Court held that "[t]here was legally sufficient evidence, or inferences deducible therefrom, to support that finding[,]" including that the "appellant transported the victim to and from her babysitting job, . . . that he paid her for babysitting on several occasions[,] . . . that the babysitting was done in appellant's home[,]" and that "[t]he victim's mother . . . testified that appellant 'was to take care of [the victim] and insure her safety to and from the house.'" *Id.* at 99.

In *Tapscott v. State*, this Court likewise held that the appellant—a child's half-uncle—could be found "responsible for supervision" on a count of child abuse even though there was no agreement between the appellant the child's mother for the child to stay with the appellant because "it was clear that appellant was to act as [the child's] supervisor[,]" reasoning that, in addition to the familial relationship, "the appellant was entrusted with [the child's] care on numerous occasions[,]" including babysitting and driving the child. 106 Md. App. 109, 142 (1995). And, in *Westley v. State*, the Court similarly held that the evidence was sufficient to conclude that the appellant consented to supervising the victim where the appellant took the victim and victim's siblings into his care, fed them, picked them up from school, and took them to the park. 251 Md. App. 365, 418-19 (2021).

Since the jury convicted Villa of sexual abuse of a minor, it necessarily found that Villa was responsible for the supervision of Crystal's children. The court instructed the jury, that, "to convict the Defendant of child sexual abuse the State must prove[,]" *inter alia*, that "at the time of the abuse the Defendant was a person with temporary responsibility for the supervision of the minor." As we have said, the jury's factual finding on this issue is entitled to deference. *See Harrison*, 198 Md. App. at 242-43.

Reviewing the evidence and reasonable inferences therefrom in the light most reasonable to the State, *Sequeira*, 250 Md. App. at 203, there was legally sufficient evidence from which the jury could conclude that Villa had responsibility for the supervision of Crystal's child when filming underneath her clothes. Although George and Crystal did not expressly acknowledge that they considered Villa responsible for the supervision of Crystal's children, their actions indicated as much. *See Anderson v. State*, 372 Md. 285, 288 (2002) (teacher responsible for student's supervision even though the mother "had never asked any of the teachers explicitly to be responsible for [the student's] supervision after school"). Villa was often around when Crystal and the children visited George. George testified that Villa would cook the girls lunch and interact with them. Crystal would sometimes leave the children at George's house, and George testified that he would sometimes fall asleep while the children were at his house and sometimes the children might go inside the house while he was outside fishing.

Although Crystal testified that Villa never interacted with the children outside of her sight, this seems inconsistent with the testimony that she would sometimes leave

George's home. If both Crystal and George were away from the house and a child went into the house with Villa, it would be reasonable for George and Crystal to expect Villa—another adult around the house—to assume responsibility for the minor children. Indeed, it is likely that they would not allow the children to be alone in the house if they did not assume another person would look out for them. Villa demonstrated that he acted with this responsibility by interacting with and cooking for the children. Accordingly, this amounts to implied consent by the parent that another adult would supervise her children and Villa's implied acceptance of that responsibility.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Circuit Court for Wicomico County. The garden center video was relevant to show Villa's intent under Maryland Rule 5-404(b), and its probative value was not substantially outweighed by undue prejudice. In addition, the evidence was legally sufficient for the jury to conclude that Villa had temporary responsibility for the supervision of Crystal's children.

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