

Circuit Court for Wicomico County  
Case No. C-22-CR-23-000087

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1796

September Term, 2023

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TRACY LEE M., JR.

v.

STATE OF MARYLAND

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Nazarian,  
Reed,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 1, 2024

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Wicomico County of sexual abuse of a minor, two counts of third degree sexual offense, and related offenses, Tracy Lee M., Jr., appellant, presents for our review a single issue, which for clarity we rephrase: whether the court’s reversal of its previous granting of a motion in limine by the State “was . . . enough to grant . . . appellant a fair trial.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the victim, who at the time was fifteen years old, testified that appellant is her mother’s boyfriend. On two occasions, appellant touched the victim on her vagina.

With respect to the first occasion, the victim testified:

I was in second grade, and I got in the car to go to the store with him. He was driving, and we went around the back and he parked, and he started to talk about how much he missed his daughters, the four other kids that he had, which he wasn’t currently seeing, and he took his hand and put it under my pants and just began to touch me.

Appellant subsequently put his hand underneath the victim’s underwear and rubbed her vagina with his fingers. The second occasion occurred when the victim was “[b]etween fourth and fifth grade.” Appellant “took [the victim] to the bedroom, . . . locked the door, . . . sat [the victim] on his lap,” and “began to touch” her. Appellant again put his hand underneath the victim’s underwear and rubbed her vagina with his fingers.

Appellant contends that the court erred in granting a motion in limine by the State to introduce evidence, and that “the subsequent reversal of the ruling was insufficient to grant . . . appellant a fair trial.” Prior to trial, the State filed the motion in limine, in which it stated:

On May 8, 2023, [appellant] was charged with Assault in the Second Degree for having assaulted the victim’s mother, [Ms. C.]. In that case, on the preceding day, May 7, 2023, [appellant] was observed striking Ms. [C.] multiple times in the face with his fists inside a residence in Pittsville, MD. Ms. [C.] was initially described as unconscious due to the attack, and emergency medical services were called, whereupon Ms. [C.] was treated at TidalHealth for her injuries. These injuries included multiple contusions on her face, to include her upper and lower lips and right and left eye sockets, all of which resulted in severe bruising to her face. Likewise during investigation of that case, and contrary to what Ms. [C.] had told law enforcement pursuant to the instant matter, Ms. [C.] stated that [appellant] has physically assaulted her on prior occasions in their relationship. On July 19, 2023, [appellant] pleaded guilty to Assault in the Second Degree for having assaulted Ms. [C.] in Wicomico County Circuit Court case: C-22-CR-23-000306.

Accordingly, the State seeks admission of evidence of that Assault in the case *sub judice*, to include a transcript of the plea hearing and the true test copy of the conviction.

This evidence is admissible in the instant matter for the express purpose of showing the trier-of-fact the setting in which the sexual abuse occurred. It is admissible to explain, and give necessary context to, the delayed time it took for the victim to report the abuse. Finally, it is admissible to prove the element of force in the case *sub judice*, and explain the victim’s fear of [appellant].

(Paragraph numbering omitted.) The court held a hearing on the motion, at which appellant opposed the motion. Following the hearing, the court granted the motion.

During his opening statement, the prosecutor stated, in pertinent part, that “after the report of the sexual abuse in this case,” appellant “assaulted [the victim’s] mother,” and “pleaded guilty to assault in the second degree.” During its case in chief, the State indicated its intent “to introduce a true test copy of [the] 2023 conviction of [appellant] for assault and the transcript of that plea hearing.” Following argument, the court reversed its previous ruling and “exclude[d] the evidence.”

Appellant contends that, for numerous reasons, the court erred in initially granting the motion in limine. Conceding that “the ruling was reversed,” appellant contends that, for the following reasons, the reversal “was insufficient to grant [him] a fair trial:”

[T]he damage was done as the State spoke of the convicted case in opening and introduced [appellant’s] violent and drug addicted character through all witnesses. There was never a corrected [sic] instruction or reference made to the ruling by anyone at trial. The spect[re] of the conviction was just left on the minds of the jurors when the correct ruling would have prevented this.

We disagree. The court twice instructed the jury that “[o]pening statements are not evidence,” and “jurors are presumed to follow the court’s instructions[.]” *Carter v. State*, 366 Md. 574, 592 (2001) (citation omitted). Appellant does not dispute that he did not ask the court, following its reversal of its ruling, to issue a corrective instruction, and does not cite any authority that required the court to issue such an instruction *sua sponte*. With respect to evidence of appellant’s “violent and drug addicted character,” the court explicitly instructed the jury that they could “consider this evidence only on the question of their [e]ffect on” the victim, and “not . . . for any other purpose,” including “as evidence that [appellant] is of bad character or has a tendency to commit crimes.” Finally, it is clear from the record that the evidence most damaging to appellant was not evidence of his violence toward Ms. C., but the victim’s extensive and detailed testimony regarding the acts of sexual abuse that appellant inflicted upon her. For these reasons, we conclude that the court’s initial granting of the motion in limine did not render appellant’s trial unfair.

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