Circuit Court for Baltimore City
Case No. 117053006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2165

September Term, 2017

JOHN BOWLING

v.

STATE OF MARYLAND

Wright,
Graeff,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: October 12, 2018

A jury, in the Circuit Court for Baltimore City, convicted John Bowling, appellant, of two counts of false imprisonment, two counts of reckless endangerment, one count of theft of a motor vehicle, and one count of theft of at least $100.00 but less than $1,000.00. Bowling was sentenced to a term of fifty years' imprisonment, with all but eight years suspended, on the first conviction of false imprisonment; a consecutive term of eight years' imprisonment on the second conviction of false imprisonment; a consecutive term of five years' imprisonment on the first conviction of reckless endangerment; a consecutive term of five years' imprisonment on the second conviction of reckless endangerment; and a consecutive term of five years' imprisonment on the conviction of theft of a motor vehicle. The final conviction was merged for sentencing purposes. In this appeal, Bowling presents the following questions for our review:

1. Was an erroneous instruction on force given to the jury?

2. Was the evidence sufficient to sustain the two convictions for false imprisonment?

3. Was an impermissible consideration used by the court at sentencing?

Finding no error and the evidence sufficient, we affirm the judgments of the circuit court.

TRIAL

Bowling was arrested and charged after it was alleged that he had stolen a vehicle that had been parked outside of a residence in Baltimore. At trial, Holly Brown testified that she lived on Port Street in Baltimore and that, at around 6:00 p.m. on January 19,

2017, she and two of her children, four-year-old "J.O." and nineteen-month-old "I.O.," were getting ready to drive to the store and were sitting in her 2007 Saturn Ion, which was parked on the street approximately "two cars down" from the front of her house. Ms. Brown testified that, before driving away, she realized that she "forgot diapers" and her "phone charger," so she exited her car and walked back to her house, leaving her two children in the still-running car. Approximately 30 seconds later, Ms. Brown was in the process of returning to her car when she saw "the lights go on and it go up the street." Ms. Brown then called the police.

Ms. Brown testified that, around the time that she called the police, her neighbor, Ashleigh Friend, approached her and asked "what was going on." When Ms. Brown informed Ms. Friend that her "kids just got taken," Ms. Friend stated that she had security cameras attached to her house. Video from those security cameras, which captured the theft, was eventually turned over to the police and shown to the jury during Ms. Brown's testimony.

Ms. Brown stated that, after the police arrived and began looking for her car and children, an unidentified individual called the police and reported that her children were on a "neighbor's doorstep." Ms. Brown then traveled to her neighbor's house, which was approximately one-half mile away from her home, and found J.O. and I.O uninjured and "sitting on the porch with the neighbors." Ms. Brown testified that her vehicle was eventually recovered but that the children's car seats were not in the vehicle at the time.

Ms. Brown provided additional details regarding the circumstances at the time of theft, including that it was "still light out" and that her street was equipped with street

lamps such that, even when dark, "it's not like it's pitch black." Ms. Brown also testified that someone walking by could "see right through" her car windows, which were not tinted or otherwise obstructed, and that, ordinarily, she can see the children in the car's rearview mirror when she is driving. Regarding her children, Ms. Brown stated that they were usually "noisy" and that they "won't sit still."

Bowling, an admitted drug user, testified in his own defense and stated that, on the night of the theft, he "was on Fairmount and Port" using drugs when he started to "get heroin sick," so he entered a nearby alley to find some drug dealers and steal "their stash." Bowling explained that, after he located and then stole the "stash," he exited the alley, at which time the drug dealers spotted him and gave chase. Bowling fled and, shortly thereafter, spied "a car running" and "nobody in it." Bowling then got in the car and drove away. Bowling testified that, prior to entering the car, he did not "look in the back or nothing like that."

Bowling testified that, after entering the car, he drove "down Port Street" and "towards Castle" and that, when he "got up toward Castle" he "heard something in the back." Bowling then "turned around and seen the kids." Bowling explained that, upon seeing the kids, he "banged a right on Castle Street" and then "took them out the car seat." Upon doing so, Bowling "told them to knock on the door and get help." Bowling then got back in the car and "watched the older one knock on the door." Shortly thereafter, Bowling drove away and "got rid of the car."

Following Bowling's testimony, the circuit court instructed the jury on, among other things, the elements of false imprisonment:

> The Defendant is also charged with the crime of false imprisonment. False imprisonment is the confinement or detention of a person against that person's will and without legal justification accomplished by force or threat of force. In order to convict the Defendant of false imprisonment, the State must prove that the Defendant confined or detained [J.O. and/or I.O.]. That [J.O. and/or I.O.] was confined or detained against his will. And that the confinement or detention was accomplished by force or threat of force and that there was no legal justification for the confinement or detention.

Later, during deliberations, the jury submitted the following note to the circuit court: "Were the car seats facing forward or backward?" The court responded by telling the jurors to "rely on the evidence presented." Shortly thereafter, the jury submitted another note to the court that read: "How is force defined?" The court responded by telling the jurors to "rely on the instructions previously provided." The jury eventually submitted a third note to the court that read: "We are stuck on definition of force. Jurors feel force was not physical force on [children.] Can we get legal definition of force?"

Following the jury's third note, the circuit court recognized that it was "the second time that they have asked for a definition of force" and that "there is not a definition of force supplied to them by the pattern [jury instructions.]" After discussing the matter with counsel and reviewing this Court's opinion in *Stancil v. State*, 78 Md. App. 376 (1989), the court stated that it was inclined to instruct the jury that "children who are too young to resist may be victims of crimes requiring force. Where there is a lack of consent by the victim, force is present whether actual or by fraudulent coercion of the will." Defense counsel objected, stating that the jury had "been given the information needed" and that "further information would be detrimental to this case." Over that

objection, the court instructed the jury as proposed. The jury ultimately returned verdicts of guilty on several charges, including both charges of false imprisonment.

At Bowling's sentencing hearing, defense counsel provided mitigating evidence on Bowling's behalf. In so doing, defense counsel reiterated Bowling's position that he "saw the car running" and "took advantage of the moment" but that he "didn't realize that the two children were in the back seat." The sentencing court responded by stating that it "believe[d] that he didn't know those kids were in the car when he took it" but that the court had an "issue" with "what happen[ed] after." Defense counsel then noted that, in his pre-sentence investigation report, Bowling maintained that, after he dropped the children off at the neighbor's house, he "waited for someone to open the door" before driving away. The sentencing court responded that it did not "believe that."

Then, prior to rendering its sentence, the court addressed Bowling:

> I got to tell you, and I haven't been a judge for – it's been about a year, and I've seen violent crimes that bothered me less than this. I do believe that when you got into that car to steal it, you did not know that there were kids in there. I believe that.
>
> But what I don't believe is that you waited for them to be safe after you dumped them on the side of the road. A 4-year-old and an 18-month-old. You dumped them on the side of the road, and then – and I don't believe that you waited to make sure that they were safe before you left, I just don't, because I was actually in the area the night of the search for these kids, and I remember well how serious it was. I remember well the helicopters that were looking for who might have taken these kids.

The court went on to discuss in greater detail the circumstances of Bowling's crime, his actions during and after the crime, the impact his crime had on the victims, and his criminal and mental health history. No objections were raised during the court's colloquy.

DISCUSSION

I.

Bowling first argues that "an erroneous instruction on force was given to the jury." Bowling maintains that the circuit court's supplemental instruction on force, which the court provided during jury deliberations, was erroneous because "there was no evidence, whatsoever, of false and fraudulent representations amounting substantially to a fraudulent coercion of the will." Bowling also maintains that the instruction was erroneous because "an instruction on such an irrelevant topic was likely to be confusing and misleading to the jury."

The State responds that Bowling's argument is not preserved because neither defense counsel nor Bowling raised the issue with the requisite specificity when the proposed instruction was discussed at trial. The State further contends that, even if preserved, Bowling's argument is without merit because the court's supplemental instruction was not "manifestly unreasonable" and because Bowling's contention that the jury may have been misled by the instruction is "entirely speculative."

We agree with the State that the issue was not preserved. Md. Rule 4-325(e) states that "[n]o party may assign as error the giving or 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 for the objection." Additionally, Md. Rule 8-131(a) provides that, "[o]rdinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court." Here, although defense counsel objected to the circuit court's

proposed instruction, he did so on the grounds that the court's prior instructions were sufficient and that further instructions would be "detrimental." At no time did either Bowling or defense counsel state that he had a problem with the court's inclusion of the phrase "fraudulent coercion of the will" in its supplemental instruction. Because the grounds raised at trial are different than those raised in the instant appeal, the appellate contentions were not preserved for our review. *Robinson v. State*, 209 Md. App. 174, 201-02 (2012), *overruled on other grounds in Dzikowski v. State*, 436 Md. 430 (2013); *see also Watts v. State*, 457 Md. 419, 427-28 (2018) (noting that, "when the basis of the objection in the trial court differed from the issue raised on appeal, this Court has determined that the issue was not preserved for review.") (citations omitted).

Assuming, *arguendo*, that the issue was preserved, we perceive no error in the court's instruction. Md. Rule 4-325(a) states that "[t]he court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate." "'The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict.'" *Appraicio v. State*, 431 Md. 42, 51 (2013) (citations omitted). Moreover, "courts must respond with a clarifying instruction when presented with a question [from the jury] involving an issue central to the case[.]" *Cruz v. State*, 407 Md. 202, 211 (2009). In so doing, "[t]rial courts must avoid giving answers that are 'ambiguous, misleading, or confusing.'" *Appraicio*, 431 Md. at 51 (citations omitted). "The decision of whether to supplement the instructions, including an instruction given in response to a jury question, is within the

discretion of the trial court and will not be disturbed except on a clear showing of an abuse of discretion." *Lindsey v. State*, 235 Md. App. 299, 314 (2018), *cert. denied* 458 Md. 593.

In determining whether the giving of a particular instruction was erroneous, the circuit court's instructions "'must be considered as a whole and [an appellate court] will not condemn a charge because of the way in which it is expressed or because an isolated part of it does not seem to do justice to one side or the other.'" *Smith v. State*, 403 Md. 659, 663-64 (2008) (citations omitted). In other words, "[r]eversal is not required where the jury instructions, taken as a whole, sufficiently protect the defendant's rights and adequately covered the theory of the defense." *Fleming v. State*, 373 Md. 426, 433 (2003).

Against that backdrop, we are persuaded that the circuit court did not abuse its discretion in giving the supplemental instruction. The jury was clearly struggling with the meaning of the word "force," which, being an element of the crime of false imprisonment, was an issue central to the case. Moreover, the jurors' confusion appears to have stemmed from a perceived lack of physical force against the children, which seems to have prompted their request for a "legal definition of force." The court, in crafting a response to the jurors note, relied on our reasoning in *Stancil v. State*, 78 Md. App. 376 (1989), a case in which we held that a child too young to resist may still be subject to "force" and thus be the victim of a kidnapping. *Id.* at 385-86. The court then informed the jurors, correctly, that children too young to resist may nevertheless be victims of crimes requiring force. *Id.* (rejecting appellant's claim that the evidence was

insufficient to sustain her conviction of kidnapping because "no force was used" when she removed a three-week old baby from the hospital). Under the circumstances, the court did not abuse its discretion in providing that supplemental instruction, as it clarified the issues and aided the jury during deliberations.

As noted, Bowling claims that the circuit court erred in including in its instruction language concerning "fraudulent coercion of the will." He maintains that the court erroneously relied on language taken directly from another case, *Watkins v. State*, 59 Md. App. 705 (1984), a case Bowling claims is factually distinguishable from his case. Bowling argues that the court's reliance on that case "illustrates the risk of taking a quotation from a different case out of context" because "the jury might have been misled into inferring that there was some hearsay, indicating 'fraudulent coercion of the will,' that was withheld from the jury."

We disagree that the circuit court's inclusion of such language, by itself, constituted an abuse of discretion. First, the court did not expressly rely on *Watkins*; rather, the court relied on our reasoning in *Stancil*, a case that had some factual similarities to Bowling's case. *Stancil*, 78 Md. App. 385-86. As part of our discussion in that case, we noted our holding in *Watkins*, in which "we concluded that, where there is a lack of consent by the victim, force is present whether actual or by fraudulent coercion of the will." *Id.* at 386. Thus, the language used by the court came directly from *Stancil*. Regardless of the source of the language, Bowling fails to cite, and we could not find, any case in which this Court or the Court of Appeals held that quoting a particular appellate case was reversible error. *See Garfinckle v. Birnios*, 232 Md. 402, 404 (1963)

("[W]e do not approve the reading of excerpts from our prior opinions, out of context, **but that in itself would not justify reversal.**") (emphasis added). In any event, Bowling's claim that the jury may have been misled into believing that there was some evidence withheld from the jury is wholly speculative, and he has failed to include any authority to suggest how that claim is relevant to our decision.

We likewise disagree that the circuit court's inclusion of the disputed language was erroneous because there was "no evidence of false and fraudulent representations." The court, in noting that force may be effectuated by way of fraudulent coercion of the will, provided clarification to the jury's obvious confusion regarding whether "force" required the perpetration of a physical act against the victim. In so doing, the court did not state that a "fraudulent coercion of the will" was required to establish force, nor did the court state that any such act had occurred in Bowling's case. Rather, the court merely stated that, in cases involving a victim who is too young to resist, force is present whether actual OR by fraudulent coercion of the will. *See Globe Sec. Systems Co. v. Sterling*, 79 Md. App. 303, 310 (1989) ("Since the instruction given by the circuit court uses the disjunctive 'or' between the first two elements, the impression was conveyed that either [element] was sufficient to find liability."); *see also Williams v. State*, 137 Md. App. 444, 459 (2001) ("[W]e presume that juries follow the instructions of trial judges."). In short, although Bowling is correct that no evidence of a fraudulent coercion of the will was presented in his case, we cannot say that the court's inclusion of that language was, under the circumstances, "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Appraicio*, 431 Md. at 51 (citations omitted) (discussing the "abuse

of discretion" standard as applied to a court's decision to give a particular jury instruction).

II.

Bowling next contends that the evidence was insufficient to sustain his convictions of false imprisonment because the State never established that he intended to take the children or that he even knew that they were in the car.[1] In support, Bowling presents several arguments: that the State never established whether the children's car seats were facing forward or backward, which was material because "a driver would have been unable to see their faces, if the car seats were facing backward;" that there was no testimony "that there were any lights on inside the car that might have caused [Bowling] to notice the children at night;" that there was no evidence that the children "were even awake, let alone actually making some noise, when the car was stolen;" that there was no evidence that Bowling ever knowingly confined or detained the children; and, that there was no evidence of force because Bowling was "completely unaware of the presence of [the children] in the back seat of [the] car."

"The test of appellate review of evidentiary sufficiency is 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.'" *Donati v.*

---

[1] The State argues that Bowling's sufficiency argument is unpreserved because, in making his motion for judgment of acquittal at trial, "he did not specify the basis that he now sets forth on appeal." We disagree. In support of his motion for judgment of acquittal, defense counsel argued the State had failed to show that Bowling had intended to take the children when he stole Ms. Brown's vehicle. That is essentially the same argument he now makes on appeal, albeit in greater detail.

State, 215 Md. App. 686, 718 (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That same standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State,* 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati,* 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, '[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

"False imprisonment . . . results from any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to remain or go where he does not wish to go." *Lamb v. State*, 93 Md. App. 422, 469 (1992) (citations omitted). "False imprisonment is, thus, an unlawful confinement or detention brought about by the instrumentality, *inter alia*, of either force or threat of force." *Id.* at 470. "To obtain a conviction, the State must prove that the defendant 'confined or detained' the victim against her will; and 'that the confinement or detention was accomplished by' force or threat of force or deception." *Howard v. State*, 232 Md. App. 125, 168 (2017), *cert.*

denied 453 Md. 366 (quoting Maryland Pattern Jury Instructions-Criminal ("MPJI-Cr") 4:13(3)).

We find the evidence sufficient. Holly Brown testified that, at the time of the theft, her two children, who were ordinarily noisy and unable to sit still, were seated in car seats in the back of her four-door sedan and that, ordinarily, she can see the children in the car's rearview mirror when she is driving. Ms. Brown further testified that it was "still light out" and not "pitch black" and that someone walking by her car could "see right through" her car's windows. Although Bowling, who admitted stealing Ms. Brown's car, denied seeing the children in the car at the time of the theft, he testified that, when he did notice the children, he drove a short distance, removed the children from the car, and then drove away. Ms. Brown testified that her children's car seats were never recovered.

From those facts, a reasonable inference can be drawn that Bowling knew that the children were in the car when he forcibly and without legal justification entered Ms. Brown's automobile and drove away. Even so, Bowling admitted that he discovered the children in the backseat during the theft and that, upon making the discovery, he forcibly and without legal justification drove the children to a neighbor's house where he forcibly and without legal justification removed the children from the car and then drove away. Under either scenario, a rational trier of fact could have found that Bowling confined or detained the children against their will and that the confinement or detention was accomplished by force. All of the points raised by Bowling to contradict those inferences go to the weight of the evidence, not its sufficiency.

III.

Bowling's final contention is that the sentencing court relied on an "impermissible consideration" when rendering his sentence. According to Bowling, the impropriety occurred when the sentencing judge noted that she "was actually in the area the night of the search for [Ms. Brown's] kids;" that she "remember[ed] well how serious it was;" and that she "remember[ed] well the helicopters that were looking for who might have taken [Ms. Brown's] kids."

The State argues, and we agree, that the issue is unpreserved. "Under Md. Rule 8-131(a), a defendant must object to preserve for appellate review an issue as to a trial court's impermissible considerations during a sentencing proceeding." *Sharp v. State*, 446 Md. 669, 683 (2016). Here, neither defense counsel nor Bowling objected when the court made the disputed remarks. Accordingly, the issue was not preserved for our review.

Even so, Bowling's argument has no merit. To be sure, appellate review of a defendant's sentence may be appropriate where it is shown that "the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations[.]" *Jackson v. State*, 364 Md. 192, 200 (2001) (citations omitted). That said, "'[i]n order to impose what is necessary to accomplish the objectives of sentencing, the sentencing judge has a very broad latitude . . . to consider whatever he has learned about the defendant and the crime.'" *Martin v. State*, 218 Md. App. 1, 45 (2014) (*quoting Johnson v. State*, 274 Md. 536, 540 (1975)). Such permissible considerations include "the facts and circumstances of the crime committed and the background of the defendant, including his or her

reputation, prior offenses, health, habits, mental and moral propensities, and social background." *Jones v. State*, 414 Md. 686, 693 (2010) (citations and quotations omitted). The sentencing judge may also consider "'the demeanor and veracity of the defendant gleaned from his various court appearances, as well as the data acquired from such other sources as the presentence investigation or any personal knowledge the judge may have gained from living in the same community as the offender.'" *Martin*, 218 Md. App. at 45 (*quoting Johnson*, 274 Md. 540).

Against that backdrop, and considering the entirety of the record, we cannot conclude that the sentencing court's unguarded, unhelpful, comments rise to the level of being "impermissible" as that concept has been applied by our appellate courts. The court simply took notice of the circumstances of Bowling's crimes and acted within its discretion in sentencing Bowling.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

JOHN BOWLING	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
v.	*	**Petition Docket No. 409 September Term, 2018**
	*	
STATE OF MARYLAND	*	**(No. 2165, Sept. Term, 2017 Court of Special Appeals)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera

Chief Judge

DATE: February 22, 2019

Additional material from this filing is available in the Clerk's Office.