UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2645

September Term, 2013

JAMES WILLIAM RATLEDGE

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: October 13, 2015

Convicted, after a jury trial in the Circuit Court for Cecil County, of attempted voluntary manslaughter, first-degree assault, and use of a handgun in the commission of a crime of violence, James Ratledge, appellant, presents two issues for our review:

I. Did the trial court err in refusing to instruct the jury on mistake of fact?

II. Did the trial court err in providing the jury with a written copy of the instructions that included only the definitions of the crimes charged, and not the entire set of instructions?

Finding no error by the circuit court, we affirm.

Trial

The testimony, adduced at trial, established that, on December 19, 2008, at approximately 4:45 a.m., twelve officers of the Maryland State Police, the Elkton Police Department, the Harford County Sheriff's Office, and the Cecil County Sheriff's Office, armed with a search and seizure warrant, searched Ratledge's residence. Two of the officers were in full police-uniform while the rest displayed their badges and wore either "tactical gear" or a "raid vest," with either the word "Trooper," "Police," or "Sheriff" printed on it in bold lettering.

The officers announced "police, search warrant," as they rammed open the front door of Ratledge's home and entered his residence. They continued to make that announcement as they made their way through the home, using flashlights to illuminate their way. Upon entering the front door of the residence, the police encountered Ratledge's son, Jesse, who, while complying with the officers' orders to lay face-down on the floor with his hands out to his sides, shouted upstairs to Ratledge, "Dad, it's the police, it's the police."

The officers then saw Ratledge open the door of the upstairs bedroom and enter a landing that overlooked the living room, holding his hands up and "mumbling something." As the officers began to ascend the stairway toward Ratledge, they announced "police, search warrant, get on the ground." Instead of complying with that command, Ratledge retreated into the bedroom from which he had emerged, closing the door behind him. Moments later, Ratledge re-opened the bedroom door, and reemerged onto the landing with his hands held up. But then, he slipped, once again, back into the bedroom, shutting the door behind him.

When the police arrived at the top of the stairs, they attempted to open the bedroom door. But Ratledge resisted their efforts from the other side of the door, kicking the door shut as the officers tried to push it open. As the police struggled to open the bedroom door, a single gunshot was fired from inside the bedroom, which pierced the wall and struck Deputy Brandon Underhill of the Harford County Sheriff's Office, who then shouted, "shots fired, I'm hit."[1] The other officers, at the door, returned fire, wounding Ratledge, who was still inside the bedroom.

Upon hearing Ratledge "moaning," Detective Matthew Sutton of the Cecil County Sheriff's Office shouted to Ratledge that he was a police officer and was there to help. Then, while Detective Sutton was attempting to negotiate Ratledge's surrender, another officer

[1] When Deputy Underhill was examined, at the residence, for injuries, it was discovered that the round that had struck him had been stopped by his protective vest and had therefore not entered his body.

informed Detective Sutton that Ratledge had called 9-1-1 and was on the line with an operator, whereupon Sutton told the officer to "have the [9-1-1] operator tell [Ratledge] to surrender, that we knew he was hurt and we wanted to help him." Seconds later, when Ratledge shouted that he had been shot in the leg and could not walk to the door, Detective Sutton instructed Ratledge to "drop his weapon, open the door with his hands extended, and . . . crawl out with his hands up[.]" Ratledge complied with the order and was then apprehended. As Detective Sutton was rendering aid to Ratledge at the scene, Ratledge repeatedly said "I'm sorry, guys."

Ratledge was subsequently transported, by helicopter, to the Shock Trauma Center, at the University of Maryland Medical Center, for treatment. There, it was determined that he had sustained three gunshot wounds: one to his left leg and two to his abdomen. Although Ratledge's blood work and toxicology report were "positive" for cannabinoid and cocaine metabolites, it was not possible to tell from the "blood work," how recently those substances had been ingested.[2] Three days after this incident, Sergeant Dave Sexton, of the Maryland State Police, went to the Shock Trauma Center to interview Ratledge. Although Ratledge was unwilling to speak with Sergeant Sexton, he did ask: "Did I shoot somebody?"

At trial, to explain his actions on the day of his arrest, Ratledge testified about a previous break-in at his house on September 7, 2008, nearly three months prior to the night

[2]At trial, Ratledge denied using any drugs on the day in question.

of his arrest.[3] In recalling that event, he said that in the early morning hours of September 7th, two men had thrown a brick through his door and entered his home. "Petrified" by this break-in, Ratledge threw a laundry hamper at the men and told them to "get out or I'll shoot." After the intruders left, he called the police.

One of the officers who responded to this break-in was Deputy Thomas Pierson of the Cecil County Sheriff's Office, who had also been part of the execution of the warrant on December 19th, the day of Ratledge's arrest. When the police responded to the break-in, Ratledge told them that he had a gun, which, after the break-in, he had placed in his bedroom. Ratledge explained at trial that he "felt [his] life was threatened" and "was pretty shook up" by the break-in.

Turning to the events that gave rise to his arrest, Ratledge testified that he went to bed at 11:00 p.m. and was subsequently awakened by "a bunch of rumbling downstairs." The noise sounded like the previous burglary, and, what is more, he claimed that he did not hear any announcement identifying the intruders as the "police" or any mention of a search warrant. He said that, when he opened the door to his bedroom to see what was going on, he put his hands up to try and block the bright light from the flashlights that were shining. He further insisted, that he "didn't hear anything" that was going on downstairs, that he was scared, and that he was left "speechless" and was only able to mumble something.

[3]Ratledge's son, Jesse, also testified at trial and corroborated his father's account of the prior break-in.

Furthermore, Ratledge claimed that he thought the people in his home were "intruders," who intended to "cause bodily harm on [him]" and that he did not notice the words "police" or "sheriff" on their clothing because it was "dark" and the light from their flashlights blurred his vision. And he denied ever hearing his son say, "Dad, it's the police."

Ratledge further testified that, after returning to his bedroom, he "heard [them] coming after [him,]" and so he went to his closet to get his handgun. But, to open the door to the closet where the gun was stored, he had to "close the bedroom door." Consequently, as he was looking for the gun in the closet, "[t]he bedroom door kept closing on its own because it hit the knob on the closet door[.]"

After retrieving his handgun from the closet, Ratledge "fired a shot through the wall," because, as he described it, "I wanted to scare the people off. I didn't want to hit anyone. I just wanted to warn them to leave[.]" When, moments later, Ratledge fell down, after being shot by the officers' return fire, he called "9-1-1" from his cell phone. He then told the 9-1-1 operator that he thought "the criminals [were] still in the house." In fact, he testified that he did not know the "intruders" were police officers until the operator told him they were and that they were there to help; at which point he asked, "are they here now" and the operator said "yes." After receiving that information, Ratledge told the officers that he was "sorry" and explained that "[he] thought they were criminals in [his] house." He said he assured them that, if he had known they were the police, he would have come downstairs and answered the door.

Jury Instructions

After the close of all the evidence, the following colloquy occurred with respect to the State's objection to a "mistake-of-fact" jury instruction requested by defense counsel:

> [STATE'S ATTORNEY]: I have an objection to instruction 5:06, mistake of fact, and it may be necessary for the court to look at some of the note cases following that instruction to understand what that instruction is about. When you look at those note cases you will see many cases in which the instruction has been used are sex offense cases, particularly those in which the allegation is that the victim was so many years younger than the defendant; and typically in those cases when the instruction is used it's generated by defendant's testimony that he believed the victim's age to be sixteen when in fact it was thirteen or fourteen. Now this is not that type of case.
>
> The other thing I want to point out to the court is that when you look at the self-defense principles outlined in the other instructions that we agreed should be given, which are 4:17.14, there is language about self-defense in those instructions. There is language about self-defense in the instructions 5:07. There is language about self-defense in instructions 4 – I am sorry – 5:02, defense of property.
>
> My point is very simply that those instructions either separately or cumulatively cover the universe of the defendant's testimony and intentions in this case that he felt that he was being threatened by intruders, not police officers. I think that given that we've already got those other instructions 5:06 is both unnecessary and confusing.
>
> [THE COURT]: [Defense counsel]?
>
> [DEFENSE COUNSEL]: Your Honor, I just frankly disagree. I mean, it's a defense. There are certain defenses that – [the State is] allowing [the] self-defense. I have defense of habitation. And I believe mistake of fact is an additional defense. It goes – it may go along with them, but it clearly is a defense, and essentially the only thing the notes - I really get out of the notes on mistake of fact is the fact on a strict liability offense it doesn't apply. But I think it applies here. It's a defense that's named and allowed under the jury instructions. I believe there's been evidence presented that would allow for

> it. I believe it's one of the three defenses that should be read to the jury in this matter.
>
> [THE COURT]: I agree with [the State], 5:06 is cumulative and is covered adequately by the other instructions. It will not be given, over the objection, which you need to note before the jury comes in, [Defense counsel].

The jury was not given the mistake-of-fact instruction, and ultimately found Ratledge guilty of attempted voluntary manslaughter, first-degree assault, and use of a handgun in the commission of a crime of violence.

Discussion

I

Ratledge contends that the court erred in declining to give the mistake-of-fact jury instruction, as requested by defense counsel. That instruction should have been given, he maintains, because it was a correct statement of the law, because it was generated by the facts, and because it was not covered by any other instructions given by the court. As to the last point, he maintains that, the mistake-of-fact instruction was "the only instruction that would have told the jury that if [his] belief had been true, then [his] conduct would not have been criminal."

The threshold issue, however, is whether this issue was preserved. Although Ratledge concedes that defense counsel did not raise an objection to the judge's decision to omit the instruction, as required by Maryland Rule 4-325(e), he nonetheless claims that the issue was preserved because trial counsel "substantially complied" with the rule. Specifically, he

asserts that, where a party does not fully comply with Maryland Rule 4-325(e), this Court may still grant appellate review of that issue if it finds that trial counsel substantially complied with the dictates of the rule. He then contends that substantial compliance should be found, here, because, after the court denied defense counsel's request for the mistake-of-fact instruction, any further objection "would have been futile" and would have "serve[d] no legitimate purpose." Finally, as a last resort, Ratledge asserts that, even if the issue were not preserved, this Court "should recognize plain error in the [jury] instructions pursuant to [Maryland] Rule 4-325(e)."

Maryland Rule 4-325(e) provides:

* * *

> (e) **Objection.** No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. . . . An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

Before the court instructed the jury, defense counsel requested that the court give the mistake-of-fact instruction, as set forth in the Maryland Pattern Criminal Jury Instructions.[4]

[4] Maryland Pattern Criminal Jury Instruction 5:06 reads: "You have heard evidence that the defendant's actions were based on mistake of fact. Mistake of fact is a defense and you are required to find the defendant not guilty if all of the following three factors are present:

(1) the defendant actually believed [alleged mistake];

(continued...)

The State objected to that instruction, and defense counsel responded by explaining why he considered the mistake-of-fact instruction to be appropriate. The court then declined to give the instruction on the grounds that it was cumulative, because the issue raised by that instruction had already been covered by the instructions the court had given as to self-defense and defense of habitation. Nonetheless, the court did advise defense counsel that he needed to "note [the objection] before the jury comes in."

Then, before the jury was brought back into the courtroom, the judge asked the parties if they had "any objections that need[ed] to be put in the record?" Defense counsel responded: "No, your Honor." At no time, after the jury returned or during the instructing of the jury, did defense counsel object to the court's refusal to give the mistake-of-fact instruction. Moreover, even after the jury was instructed, defense counsel "failed to object on the record" to the court's unwillingness to give the requested instruction. Thus, Ratledge failed to comply with the requirements of Maryland Rule 4-325(e).

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[4](...continued)
(2) the defendant's belief and actions were reasonable under the circumstances; and (3) the defendant did not intend to commit the crime of [crime] and the defendant's conduct would not have amounted to the crime of [crime] if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant's conduct would not have been criminal][defendant would have the defense of (defense)].

In order to convict the defendant, the State must show that the mistake of fact defense does not apply in this case by proving, beyond a reasonable doubt, that at least one of the three factors previously stated was absent." *General v. State*, 367 Md. 475, 481 (2002).

"Even if [Maryland Rule 4-325(e)] is not completely complied with," however, "we have recognized that on occasion, an objection in substantial compliance with the Rule will be considered adequately preserved." *Braboy v. State*, 130 Md. App. 220, 227 (2000) (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)). As the Court of Appeals explained in *Sims v. State*, 319 Md. 540, 549 (1990):

> We have said that under certain well-defined circumstances, when the objection is clearly made before instructions are given, and restating the objection after the instructions would obviously be a futile or useless act, we will excuse the absence of literal compliance with the requirements of the Rule. We make clear, however, that these occasions represent the rare exceptions, and that the requirements of the Rule should be followed closely. Many issues and possible instructions are discussed in the usual conference that takes place between counsel and the trial judge before instructions are given. Often, after discussion, defense counsel will be persuaded that the instruction under consideration is not warranted, and will abandon the request. Unless the attorney preserves the point by proper objection after the charge, or has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction, the objection may be lost.

(Internal citations omitted.)

Defense counsel's mere request for the mistake-of-fact instruction did not rise to the level of "substantial compliance" for the purposes of satisfying Maryland Rule 4-325(e). After defense counsel initially requested a mistake-of-fact instruction, he declined to raise the matter again, even though the court reminded defense counsel that he would need to note his objection on the record. Nonetheless, defense counsel failed to do so. In fact, he thereafter remained silent as to the requested instruction and the court's omission of that instruction. He neither asked for a continuing objection, nor renewed his objection after the

court instructed the jury. And, contrary to Ratledge's contention, raising such an objection, at this point would not have been "futile." The record indicates that the court not only had no qualms as to such an objection being made for the record but, in fact, encouraged counsel to do so.

These facts stand in stark contrast to *Gore v. State*, 309 Md. 203 (1987), upon which Ratledge principally relies[5] to support his assertion that trial counsel substantially complied with Maryland Rule 4-325(e) and thereby preserved this issue for our review. In *Gore*, the trial court told defense counsel, during a bench conference, that the court was going to give a supplemental jury instruction on a particular matter of law. 309 Md. at 206. Defense counsel then indicated that he would object if the court were to give that instruction, to which the court replied: "You can object all you want, but I'm going to do it. Go on." *Id*. The court then proceeded to instruct the jury as indicated, and defense counsel failed to renew or continue his objection. *Id*.

The Court of Appeals held that, although defense counsel did not object, after the jury was instructed, as required by Maryland Rule 4-325(e), the issue was nevertheless preserved because the conversation and objection that occurred during the bench conference demonstrated that counsel had "substantially complied" with the rule. *Id*. at 209. In so

[5]Ratledge also cites to *Bennett v. State*, 230 Md. 562 (1963). But, there is no reason for us to address that case, as the Court of Appeals in *Gore* revisited and clarified what it had said earlier in *Bennett* regarding compliance with Maryland Rule 4-325(e).

holding, the Court of Appeals said, for there to be substantial compliance with Maryland Rule 4-325(e),

> there must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Id.

Quoting this language from *Gore*, Ratledge claims that in this case, just "as in *Gore* . . . each of the conditions necessary for meeting the substantial compliance requirement is satisfied." We disagree. In *Gore*, the court expressly and categorically dismissed defense counsel's objection, thereby suggesting that a renewal of that objection would be "futile or useless". In contrast, the trial court, in the instant case, encouraged, and even prompted, defense counsel to note its objection on the record, yet defense counsel declined to do so. Accordingly, we conclude that the issue was not properly preserved for our review.

In the alternative, Ratledge requests that this Court consider this issue under the "plain error" doctrine, pursuant to which this Court possesses "plenary discretion to notice plain error material to the rights of a defendant, even if the matter was not raised in the trial court," *Danna v. State,* 91 Md.App. 443, 450 (1992). But, such review is rarely exercised. Indeed, the Court of Appeals has said that "appellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon." *Morris v. State*, 153 Md. App. 480, 507 (2003). And "in the context of erroneous jury instructions,"

it has stressed that, "the plain error doctrine has been used sparingly." *Conyers v. State*, 354 Md. 132, 171 (1999). In fact, we exercise our discretion to recognize plain error only when the alleged error is "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Brown v. State,* 169 Md.App. 442, 457 (2006). In determining whether any of these criteria were met, we consider, "the opportunity to use an unpreserved contention as a vehicle for illuminating an area of law; the egregiousness of the trial court's error; the impact of the error on the defendant; and the degree of lawyerly diligence or dereliction." *Steward v. State*, 218 Md. App. 550, 565 (2014) (citing *Morris,* 153 Md.App. at 518–524).

In our view, even if the court erred in declining to give the mistake-of-fact instruction, that error was not "compelling", nor "extraordinary", and therefore does not warrant plain error review. *Braboy*, 130 Md. App. at 228. Moreover, this unpreserved challenge to a jury instruction does not address a novel, unexplored area of the law; the alleged error was certainly not egregious; and the multiple, unseized opportunities to note an objection on the record may well reflect defense counsel's thoughtful decision to proceed no further with this issue. As such, this alleged error does not fall within the limited and exceptional circumstances necessary for triggering plain error review. *Steward*, 218 Md. App. at 565.

II

Approximately two hours after receiving instruction and retiring to deliberate, the jury sent a note to the court requesting a copy of all the legal definitions of all the charges. When

counsel was informed of the note, defense counsel asked for "all the instructions" to be sent to the jury and not just the jury instructions pertaining to each charge. The court denied that request and only provided the jury with the definitions requested. Ratledge now contends that, "by providing instructions only on the offenses charged and not the very viable defenses [of defense of habitation and self-defense]," the trial court committed reversible error by "plac[ing] an undue emphasis on the State's theory of the case over all other instructions."

To support this claim, Ratledge first cites *Spell v. State*, 49 Md. App. 323 (1981), where we "admonish[ed]" a trial court for instructing the jury that the presence at or near the crime is a "compelling element" in proving criminal agency. In that case, we explained that courts must exercise caution "when commenting upon the considerations available to the jury." *Spell*, 49 Md. App. 323. To that end, we warned courts to avoid adjectives that place "undue weight" or "suggestive emphasis" on some considerations over others. *Id.* at 327.

Ratledge suggests that providing a copy of the legal definitions of the crimes charged, in response to a jury request for those definitions, as occurred below, improperly overemphasized one consideration over others in the same way that the trial court did in *Spell*. We disagree. *Spell* was concerned with trial courts being overly suggestive, or ascribing coercive descriptions to considerations that a jury was required to make. In other words, the *Spell* court was worried about a trial court nudging the jurors in a particular direction, or in any way compromising essential jury determinations. Such an issue is not

before us. Here, the trial court was responding to a request from the jury by giving it a written copy of the legal definitions of the offenses alleged, as requested by the jury, and it did so without comment or suggestions of any sort.

Ratledge next claims that, because Maryland Rule 4-326 (which applies to communications with the jury) does not "expressly permit" the court to give the jury a partial set of instructions, "it would seem that the rule requires the submission of the entire set of . . . instructions, not just the definitions of the crimes charged."[6] Consequently, the court's failure to reissue the instructions in full, Ratledge claims, placed undue emphasis on the instructions sent back to the jury.

With respect to the procedure for handling jury communications, Maryland Rule 4-326 provides, in relevant part:

* * *

> (d) **Communications with jury.** (1) Notification of Judge; Duty of Judge. A court official or employee who receives any written or oral communication from the jury shall immediately notify the presiding judge of the communication. If the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

[6]Ratledge also cites *Hebb v. Maryland*, 44 Md.App. 678, 681 n.2 (1980), to contrast Maryland Rule 4-326 with is predecessor, Maryland Rule 757. The former iteration of the rule expressly stated that "with the approval of the court [the jury] may take into the jury room those instructions or parts of instructions which have been reduced to writing." Ratledge contends that the absence of such language from the current rule suggests that a jury cannot take into the jury room only part of the instructions.

Although the rule clearly calls for the trial court to announce, discuss, and respond to jury communications that "pertain[] to the action," it does not, as Ratledge contends, dictate the substance of the trial judge's response to a jury's request for clarification of jury instructions. We therefore disagree with Ratledge's reading of Maryland Rule 4-326. Moreover, we note that "[t]he decision to give supplemental instructions is within the sound discretion of the trial court and will not be disturbed on appeal, absent a clear abuse of discretion." *Roary v. State*, 385 Md. 217, 237 (2005) (citation omitted). As the Court of Appeals explained in *Cruz v. State*, 407 Md. 202, 210 (2009):

> Trial courts have discretion in deciding whether to give a jury supplemental instructions in a criminal cause. *Lovell v. State*, 347 Md. 623, 657 (1997). This discretion, of course, is not boundless. We have held that trial courts "must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008).

(Internal parallel citation omitted.)

The record in this case shows that the jury requested copies of the definitions of the charged offenses, and the court provided those definitions. Moreover, providing the jury with a written copy of the requested definitions is, as the State points out, tantamount to responding to a jury request for a written copy of the relevant statute, which in *Jefferson v. State*, 194 Md. App. 190 (2010), this Court found was not an abuse of discretion. Specifically, in *Jefferson*, we held that where the jury had "expressed difficult with terminology," the trial court did not err when it sent a requested portion of a handgun statute to aid the jury during deliberations, despite defense counsel's objection. 194 Md. App. 190.

Thus, the circuit court's compliance with the jury's request for a written copy of the crimes charged did not impose an undue burden on, or unfairly influence, the jury. Finally, as the jury did not express confusion or need for clarification, with respect to any other instructions, the court below clearly did not abuse its discretion in denying defense counsel's request for the jury to be provided with copies of all instructions previously given.

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