Circuit Court for Cecil County
Case Nos. 07-K-16-000058, 07-K-16-000099

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 9 &12

September Term, 2018

RASHON LAMONT HARRIS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Thieme, Raymond G., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 22, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State charged Roshon Lamont Harris with child abuse and related charges concerning three children, T.D., N.H., and A.H. After a two-week trial in the Circuit Court for Cecil County, a jury found Mr. Harris guilty of second-degree child abuse of T, conspiracy to commit child abuse of T, false imprisonment of T, first- and second-degree child abuse of N, neglect of N and A, and rendering N a child in need of assistance ("CINA"). Mr. Harris argues on appeal that the evidence was insufficient to sustain his convictions, that the trial court erred in permitting the prosecutor to make improper emotional pleas to the jury during closing arguments, and that the trial court abused its discretion in failing to grant defense counsel's motion for a continuance. We affirm.

I. BACKGROUND

The evidence and testimony at trial painted a picture of a strict and sometimes volatile household from which T, the oldest child, tried often to run away. Because Mr. Harris challenges the sufficiency of the evidence as to each of the charges and the charges vary by child, we recount the evidence relating to each child.

A. Evidence Relating to T.D.

At the time of the trial, T was sixteen years old and in the eleventh grade. Mr. Harris was married to T's mother; and she had a different biological father. The family lived in New Jersey until T was eleven, when they moved to Elkton. T's mother commuted to Philadelphia for work and Mr. Harris worked from home. T was homeschooled from fifth the grade onward.

According to T, when she got in trouble, her parents either sent her to her room or beat her. In one instance, she was already in her bedroom when she got in trouble, so Mr.

Harris pinned T down and T's mother beat her across the back of her legs with a belt. On another occasion, Mr. Harris picked T up and threw her out the front door with so much force that she hit her head on impact. Margaret Aiello, a neighbor, witnessed the latter incident.

Whenever Mr. Harris sent T to her room as punishment, it was called "solitary confinement." T's stays in solitary confinement ranged from two weeks to seven months. While T was in solitary confinement, Mr. Harris didn't allow her to leave her bedroom. When it was time to eat, Mr. Harris brought food to her. The parents also stapled her curtains to the windows so that T wouldn't be able to open them.

T frequently ran away from home. In November 2015, after yet another runaway attempt, when T left the house without shoes, she went to the home of a neighbor, who contacted police. Sergeant William Wadsworth took T into shelter care. On January 13, 2016, Mr. Harris was arrested for child abuse of T.

At trial, the state's expert, a clinical social worker, Angela Quinn, testified that T's journal reflected suicidal ideations, significant self-blame for her own trauma, and ambivalence toward her abuser. Ms. Quinn attested that these were all cognitive symptoms that indicated trauma. Ms. Quinn further testified that T had emotional symptoms that indicated trauma, including depression, anxiety, and hopelessness.

B. Evidence Relating to N.H.

On December 29, 2015, Detective Lindsey Ziegenfuss executed a search warrant on the family home. She took photographs that showed the kitchen pantry and refrigerator full

of food. On January 13, 2016, Detective Ziegenfuss learned that Mr. Harris had been arrested, so she contacted Kristen Berkowich, a Child Protective Services worker, to check on the welfare of the other children in the house. When they knocked on the door, a house guest, Timothy Baker, answered the door and invited them inside. According to Detective Ziegenfuss, Mr. Baker identified himself as "Achazayah," provided two different Social Security numbers, and produced a passport with the name of "Tim Baker." Ms. Berkowich then notified her supervisor that there was no appropriate caregiver in the home.

N was brought to the hospital on January 21, 2016. At the time, she was almost two years old and weighed 18 pounds, 7 ounces, below the first percentile for her age. Dr. Allen DeJong, the State's medical expert and Medical Director of the Children at Risk Evaluation Program, testified that N had a swollen abdomen, which often occurred in malnourished children. N also had swollen knees, ankles, and wrists, and was unable to extend her legs. N was only able to bear her weight if she was holding on to something, but she was not able to take steps alone. Dr. DeJong testified further that N had lumps at the edges of her ribs. X-rays suggested that N's bones were not as dense as they should be, and some were fraying at the ends. Whenever Dr. DeJong attempted to straighten out N.H.'s legs, she cried. Dr. DeJong attributed the pain to rickets, a metabolic bone disease. N also suffered from Vitamin D deficiency, a calcium deficiency, and a low measurement of Vitamin C. Overall, Dr. DeJong concluded that N suffered from severe chronic malnutrition, and opined that severe malnutrition would put a child at risk of death.

C. Evidence Relating to A.H.

A was brought to the hospital on January 28, 2016. At the time, he was three years old. Dr. DeJong examined A and found that he was slightly underweight. Based on medical records, Dr. DeJong saw that at ten months of age, A had fractured his right femur. In the X-rays of his fracture, the doctors noted that A had signs of osteopenia (low bone density) as well as flaring at the ends of his bones, which indicated rickets, a metabolic bone disease caused by vitamin D deficiency. Mr. Harris was informed of the doctors' concerns at the time of the X-rays, but never followed up to have the necessary laboratory tests. Dr. DeJong also noted that A had abnormal bones and showed signs of continued osteopenia in when he examined him in 2016, although his condition was not as severe as when he was ten months old.

Dr. DeJong also observed that A had strabismus. Mr. Harris testified that he was aware that A might have a problem with his eyes, and claimed that he and his wife would put an eye patch on him and do exercises with him to try to strengthen his eye. Mr. Harris also introduced a photo of A wearing an eye patch. Although Dr. DeJong acknowledged that the treatment for strabismus includes an eye patch, he asserted that it must be administered frequently, and that wearing an eye patch for an hour a day for a few weeks would not be sufficient to correct strabismus. Dr. DeJong testified that strabismus, when not treated, could lead to sudden blindness, and there should have been further medical intervention aside from the eye patch.

Mr. Harris disputed that A was malnourished. He testified that he had started to buy

organic foods because of his heart problems and did not want to introduce chemicals into his children's systems in the first two years of their lives. For that reason, he wanted his children's diets to be as natural as possible.

We provide additional facts as necessary below.

II. DISCUSSION

Mr. Harris raises three categories of arguments on appeal, the first of which requires some count-by-count parsing.[1] *First*, he contends that the evidence was insufficient to sustain his convictions. *Second*, he argues that the trial court erred in connection with the prosecutor's emotional reactions during closing argument. *Third*, he argues that the court abused its discretion in failing to grant a last-minute continuance of the trial.

A. The Evidence Was Sufficient To Sustain Mr. Harris's Convictions.

When evaluating the sufficiency of the evidence to support a conviction, we view the evidence "in the light most favorable to the prosecution" and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Roes v. State,* 236 Md. App. 569, 582 (2018). It is the trier of fact's role to weigh the evidence and determine the credibility of witnesses, not ours. *Id.* We are

[1] Mr. Harris stated the Questions Presented in his brief as follows:

> 1. Was the evidence insufficient to sustain the convictions?
> 2. Did the trial court err in permitting the prosecutor to make improper emotional pleas to the jury during rebuttal closing argument?
> 3. Did the trial court abuse its discretion in failing to grant defense counsel's motion for a continuance?

concerned primarily with whether the State met its burden of production as to the essential elements of each charge, not with the relative weight of the evidence or whether we, as fact-finders, would be persuaded to convict.

1. The evidence was sufficient to support the conviction for second-degree child abuse of T.

Second-degree child abuse occurs when "[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor [causes] abuse to the minor." Md. Code (2002, 2012 Repl. Vol., 2018 Supp.) § 3-601(d)(1)(i) of the Criminal Law Article ("CL"). The statute defines "abuse" as "physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act." CL § 3-601(a)(2). But a parent or person acting *in loco parentis* may use a reasonable amount of force upon a child for the purpose of safeguarding or promoting the child's welfare. *Bowers v. State*, 283 Md. 115, 126 (1978). And the reasonableness of the punishment can be determined, "in light of the age, condition and disposition of the child, and other surrounding circumstances." *Id.* The punishment must not be for the purpose of inflicting pain or amount to cruel and outrageous treatment of the child. *Id.*

The abuse underlying this charge took two forms: *first*, when Mr. Harris pinned T down on the bed while her mother whipped her with a belt, and *second*, when he threw her down the front steps of the house and caused her to fall and hit her head. He doesn't dispute that he did these things, and there can be no serious dispute that a jury could find that both

acts, and the resulting injuries, met the standard for abuse.

The issue, then, is whether Mr. Harris's actions qualified as permissible parental discipline. He testified at trial that, in both instances, he merely was disciplining T and that the punishment, although corporal, was reasonable. The evidence, however, readily permitted a jury to find otherwise, even in the face of bad behavior on her part. Maybe a jury could have found that pinning T down so that her mother could beat her with a belt represented reasonable corporal punishment under the circumstances, but it easily could have found the opposite. The same is true for Mr. Harris's decision to throw T down the front steps—the jury might have decided that he reacted reasonably in response to her conduct, but the evidence amply supported a finding that he acted unreasonably. The evidence supporting these convictions was sufficient.

2. The evidence was sufficient to support the conviction for conspiracy to commit child abuse of T.

We reach the same conclusion with regard to Mr. Harris's conviction for conspiracy to commit child abuse. Conspiracy is a common law crime that "consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Mitchell v. State*, 363 Md. 130, 145 (2001). The essence of a conspiracy is an agreement, "a meeting of the minds reflecting a unity of purpose and design," and that agreement may be proven with circumstantial evidence. *Id*.

The conspiracy charge arises from the incident in which Mr. Harris held T down so her mother could whip her with a belt. Mr. Harris argues that there was no agreement to

establish any unlawful purpose because he never intended to commit child abuse. But again, there is no dispute about what happened, or that the two acted in concert, or that T sustained injuries as a result. To agree with Mr. Harris, we would have to find that *no* reasonable jury could infer from the trial evidence and testimony that their (undisputed) agreement qualified as an agreement to commit abuse. But if, as we held already, the evidence was sufficient to support a finding that Mr. Harris *committed* child abuse by forming and carrying out this agreement, the evidence certainly sufficed to support a finding that their *agreement* so to act, itself undisputed, was formed with the unlawful purpose of abusing T. The evidence supporting this conviction was sufficient as well.

3. The evidence was sufficient to support the convictions for false imprisonment of T.

False imprisonment is "the unlawful detention of a person against his will." *Midgett v. State*, 216 Md. 26, 38–39 (1958). The State must prove that "(1) that appellant confined or detained the victim; (2) that the victim was confined or detained against [] her will; and (3) that the confinement or detention was accomplished by force, threat of force, or deception." *Garcia-Perlera v. State,* 197 Md. App. 534, 558 (2011). Generally, false imprisonment involves some sort of restraint. But imprisonment can include any exercise of force, or threat of force, that deprives another person of liberty or compels an individual to remain where she does not wish to remain. *Mason v. Wrightson*, 205 Md. 481, 487 (1954).

Although confining a child to her room for the purpose of punishment is not false imprisonment *per se*, disciplinary confinement must still be reasonable. T testified that

Mr. Harris confined her to her room for extended periods of time—not for hours, but for periods ranging from two weeks to seven months. While in confinement, food was brought up to her, like a prisoner. Her curtains were stapled to her windows so that she couldn't open them. She had no access to the outside world. A jury readily could have concluded that her confinement exceeded the bounds of reasonable discipline.

Mr. Harris rejoins that T was not truly confined because the room was unlocked and she had the freedom to leave. But actual physical restraint isn't required—the fear arising from the threat of force is sufficient, and a reasonable jury could find from this testimony that T remained in her room out of fear that if she left, Mr. Harris would beat her or her confinement would be prolonged. *Mason*, 205 Md. at 487. That is enough to convict Mr. Harris of false imprisonment.

4. The evidence was sufficient to sustain the convictions for first- and second-degree child abuse of N

First- and second-degree child abuse are statutory crimes, and the difference between them lies primarily in the severity of the resulting harm the child sustains. First-degree child abuse, CL § 3-601(b)(1), is child abuse that results in permanent injury or death:

> A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor that:
>
> (i) results in the death of the minor; or
>
> (ii) causes severe physical injury to the minor.

The definition of "severe physical injury," CL § 3-601(a)(5), includes starvation and

injuries that cause permanent or protracted disfigurement or impairment:

> (i) brain injury or bleeding within the skull;
> (ii) starvation; or
> (iii) physical injury that:
> 1. creates a substantial risk of death; or
> 2. causes permanent or protracted serious:
>   A. disfigurement;
>   B. loss of the function of any bodily member or organ; or
>   C. impairment of the function of any bodily member or organ.

Second-degree child abuse, CL § 3-601(d)(1)(i), occurs when "[a] parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor . . . cause[s] abuse to the minor." "Abuse" for these purposes involves a less severe degree of harm: CL § 3-601(a)(2) defines abuse as "physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act." The abuse can include indirect harms, such as failure to obtain medical assistance for a child. *Robey v. State*, 54 Md. App. 60, 77 (1983); *State v. Fabritz*, 276 Md. 416, 425–26 (1975). The question is whether the parent acted intentionally, or failed intentionally to act, under circumstances that objectively meet the statutory definition of abuse. *Fisher v. State*, 367 Md. 218, 270 (2001).

On this record, the evidence is sufficient to sustain a conviction for first-degree child abuse of N. Mr. Harris failed to provide him with proper medical attention, and the absence of medical care caused N to suffer a Vitamin D deficiency, calcium deficiency, low measurement of Vitamin C, and severe chronic malnutrition that caused a distended

abdomen and bone deformities. A jury could have reasonably found this evidence sufficient to establish the "severe physical injury" necessary to prove first-degree child abuse.

Mr. Harris responds that there was plenty of nutritious food in the house, and that he had no reason to believe that N suffered from any deficiencies. His subjective beliefs are not a defense, though, and the evidence at trial demonstrated that Mr. Harris's decisions caused N to suffer from malnutrition, however much food may have been in the house. *Id*.

The evidence is also sufficient to sustain a conviction for second-degree child abuse. When N arrived at the hospital, she had a swollen abdomen. Her knees, ankles, and wrists were swollen as well. She was incapable of walking on her own, and cried every time Dr. DeJong attempted to straighten her legs. The jury could readily have found from this record that Mr. Harris failed to seek medical care for N, even though she displayed physical signs of malnourishment, and that his actions and inactions threatened her health and welfare.

5. The evidence was sufficient to sustain Mr. Harris's convictions for neglect of N and A

"Child neglect" is an "intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor's physical health or a substantial risk of mental injury to the minor." CL § 3-602.1(a)(5)(i). Again, Mr. Harris doesn't dispute the core facts underlying the charge, but does dispute that he was aware of N's vitamin deficiencies or any need for medical care. We measure the parent's intent to provide necessary assistance and resources against a reasonable person standard. *Hall v. State*, 448 Md. 318, 331 (2016).

Mr. Harris argues that he could not have been aware of N's vitamin deficiencies by

looking at her, and that there was no evidence or behavior indicating that either N or A needed medical attention. The record demonstrates otherwise. There was abundant evidence at trial that N was malnourished and needed medical attention. Although Mr. Harris may not have known the medical specifics of N's malnourishment, he had ample opportunity to notice how small she was for a two-year-old, and the unusual swelling in her abdomen, her curled toes, and the fact that she cried any time anyone attempted to straighten her legs. A jury easily could have found that a reasonable parent would have sought medical attention under the circumstances and, viewing the evidence in the light most favorable to the State, that there was sufficient evidence to convict Mr. Harris of neglecting of N.

With regard to A, Mr. Harris admitted that he knew about his lazy eye, but argues that he and his wife treated him with an eye patch and exercises to strengthen his eye muscles. But Mr. Harris wasn't relying on the advice of an eye specialist—he never took A to an eye doctor, and relied solely on knowledge his wife acquired as a technician at the Children's Hospital of Philadelphia. Even still, Mr. Harris recognized that the patch was not improving A's condition and failed to take any further action. Moreover, when A was treated for a fractured femur at 10 months old, the doctors determined that he appeared to have rickets and told Mr. Harris to bring A back for more testing. That never happened, and Dr. DeJong characterized this failure as neglect in appropriate medical care. A reasonable jury could have concluded that Mr. Harris's intentional decisions about N's and A's health created a substantial risk of harm to their physical health, and the evidence was

sufficient to sustain both neglect convictions.

6. The evidence was sufficient to sustain the conviction for rendering N a child in need of assistance.

Mr. Harris contends that the evidence was insufficient to support his conviction for rendering N a child in need of assistance.[2] Section 3-828(a) of the Courts and Judicial Proceedings Article provides that an adult "may not willfully contribute to, encourage, cause or tend to cause any act, omission, or condition that renders a child in need of assistance." Md. Code (1973, 2013 Repl. Vol.) § 3-828(a) of the Courts and Judicial Proceedings Law Article ("CJ"). A "child in need of assistance" is a "child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." CJ § 3-801(f).

Mr. Harris makes essentially the same argument as he did in response to the child abuse charges, *i.e.*, that he was not "unwilling" to care for N, as evidenced by the presence of healthy organic food in the house. His argument encounters the same problem with this charge: a jury could easily have found from the trial testimony and evidence that N's low weight, difficulty standing and walking, and chronic malnutrition should have revealed to Mr. Harris that she needed medical help and that he failed to obtain it for her. Again, he doesn't dispute the essential facts, and the evidence allowed a reasonable trier of fact to

[2] Mr. Harris was charged as well with rendering A.H. a CINA, but that count was *nolle prossed*.

conclude that Mr. Harris's failure to provide N with medical care was willful.

B. The Circuit Court Did Not Err In Connection With The Prosecutor's Emotional Reaction During Rebuttal Closing.

At two points during the State's rebuttal closing, the prosecutor became emotional and began to cry in the midst of her argument. The first time, the defense objected and asked to approach the bench. The prosecutor responded "[c]an I just have a minute," and the court instructed the jury to "disregard" and "[j]ust listen to the argument nothing else."

As the prosecutor continued, her voice broke again, the defense asked again to approach the bench, and the court called them forward. The defense objected again "based on the actions and demeanor, tearing, and so forth in front of the jury." The State responded "I am not trying to," and defense counsel replied that he "[didn]'t believe in my heart of hearts that, you know, it's on purpose; however, in light of all the facts and circumstances, and I would object to it, and I am not sure if it could be cured." The court expressed confidence that the jury would not be influenced by the prosecutor's behavior—"I feel comfortable the jury will disregard it. They're not going to pay any attention to it."—and said nothing to the jury at that point. After the rebuttal argument was finished, however, the court instructed the jury not to give any weight to the prosecutor's emotions.

Mr. Harris argues here that the post-argument curative instruction failed to cure the prejudice from the prosecutor's emotional responses. The State responds *first* that when the court responded to Mr. Harris's objections during closing argument by instructing the jury to "disregard," Mr. Harris acquiesced in this remedy. *Second*, the State argues that Mr. Harris did not request any additional relief and cannot now claim to have suffered

prejudice. *Third*, the State contends that Mr. Harris did not make an adequate record of what happened in the courtroom that could counter the court's assessment that the jury would disregard the prosecutor's reactions.

We agree with the State that the defense didn't ask for any relief at the time that the court denied. Although counsel lodged an objection, the record doesn't reflect any specific request for relief, and counsel didn't object to the court's handling of the prosecutor's reaction at the time. Preservation aside, though, trial judges are in the best position to determine the suitability of closing arguments, *Mitchell v. State*, 408 Md. 368, 380–81 (2009), and we reverse for impropriety in closing argument only "where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Lawson v. State*, 389 Md. 570, 592 (2005). And this transcript reveals nothing of the sort. The trial court found that the prosecutor's emotional display was not intended to mislead the jury, and the court directed the jury to disregard it. Although Mr. Harris is correct that the defense had no opportunity to address the jury after the State's rebuttal closing, he never asked for the opportunity to do so, and doesn't identify anything he would have said or explain how the absence of any such opportunity prejudiced him. We see no error in the court's finding that the jury was not likely to have been misled or influenced by the prosecutor's emotional responses or the court's handling of Mr. Harris's limited objection to them.

C. The Trial Judge Properly Exercised Discretion To Deny Mr. Harris's Motion To Postpone.

Finally, Mr. Harris contends that the trial court erred in denying his morning-of-

trial motion to postpone. This is a decision that affects "the convenience of the court, the jury, the prosecution, other witnesses, and possibly other cases scheduled for trial," and is thus committed to the broad discretion of the trial court. *Wilson v. State*, 345 Md. 437, 451 (1997).

At the first five motions hearings in this case, which took place between April 22 and June 13, 2016, Mr. Harris was represented by counsel. On June 29, 2016, the trial was postponed to January 9, 2017. About a month before the new trial date, new defense counsel entered their appearances. Eight days later, they filed a motion for continuance on the ground that they had entered their appearance without checking their availability for trial; they did not contend they were unavailable on the trial date or say anything about needing time to prepare or to obtain an expert witness.

On the morning of trial, the defense asked anew for a continuance, claiming that after reviewing the evidence over the weekend, they needed to retain an expert witness to counter the State's expert. The court denied the motion for continuance on the grounds that (1) the trial had already been postponed from June 2016 to January 2017; (2) the January 9, 2017 date had been set since June 29, 2016; and (3) the motion represented the first time new defense counsel raised the need for an expert. In the course of the argument, the defense argued that Mr. Harris had asked his initial counsel to hire an expert, but the State responded that Mr. Harris had refused to allow it, and pointed out that the court itself had noted the possible need for an expert at the June 13, 2016 hearing.

We see no abuse of discretion in the court's decision. This was a two-week trial that

already had been postponed, and the parties and witnesses were in the courtroom and ready to go. The court had identified long before the potential need for an expert, and counsel waited until the morning of trial to request time to obtain one. We cannot say that the trial judge abused its discretion by finding that this last-minute request for a continuance did not justify the inconvenience it would have caused to the court, the jury, the prosecution, other witnesses, and possibly other cases scheduled for trial. *Wilson*, 345 Md. at 451.

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