Circuit Court for Montgomery County
Case No. 138037C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 849

September Term, 2021

MARIE ANDREA

v.

STATE OF MARYLAND

Kehoe,
Reed,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: July 14, 2022

*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.

A jury, sitting in the Circuit Court for Montgomery County, found the appellant, Marie Andrea, guilty of two counts of second-degree child abuse of her son, A.M.F., who was three years old at the time of the abuse. As to the first count, the court sentenced Andrea to a suspended five-year sentence. As to the second count, the court sentenced Andrea to five years, suspending all but two days of executed incarceration with credit for two days that Andrea had served. The court placed Andrea on five years of supervised probation with conditions, including a requirement of mental health treatment compliance. Andrea presents three questions for our review, [1] which we rephrase as follows:

1. Did the trial court properly admit excerpts of Andrea's video interview with police, while excluding other parts of that interview?

2. Did the trial court err in admitting a transcript of Andrea's video interview with police?

[1] Andrea phrased the questions presented as follows:

1. Did the circuit court err in admitting into evidence excerpts of Appellant's video-recorded interview with police, where the evidence could have misled the jury about the meaning of Appellant's statements, and where the court precluded Appellant from introducing the full-recorded interview, contravening the Rule of Completeness?

2. Did the circuit court err in admitting into evidence a transcript of Appellant's video-recorded interview with police that was prejudicial and not authenticated?

3. Did the circuit court err in denying Appellant a new trial upon learning that Appellant was denied a complete and accurate transcript of the *voir dire* proceeding, contravening Maryland Rule 16-503(a) that requires proceedings before a judge to be recorded verbatim in their entirety?

3. Did the trial court err in denying Andrea's motion for new trial that was based on the court's inadvertent failure to record part of voir dire?

For the reasons to be discussed, we shall affirm the judgments of the circuit court.

BACKGROUND

In December 2020, the State indicted Andrea on one count of first-degree assault and four counts of second-degree child abuse. The indictment alleged that Andrea violated the child abuse statute by committing the following actions: she "did strangle A.M.F.," she "did bite the buttocks of A.M.F.," she "did bite the arm of A.M.F.," and she "did force A.M.F. to eat a cockroach[.]"

In January 2021, Andrea filed a plea of not criminally responsible by reason of insanity ("NCR"). After Andrea later indicated that she would be withdrawing her NCR plea, the State filed a "Motion in Limine to Preclude Mention of Mental Disorder or Mental Incapacitation[.]" The State requested that the court "preclude the defense from questioning any witnesses about the defendant's mental status on the day of the incident or mentioning it at any point during the trial[.]"

On the morning of the first day of trial, Andrea withdrew her NCR plea. The State then nol prossed the first-degree assault charge and asked the court "to preclude mention during opening or with any of the witnesses any mention of the defendant's mental state at the time of this incident." The court agreed with the State and ruled that Andrea's subjective state of mind was irrelevant to the remaining charges under *Fisher v. State*, 367 Md. 218 (2001).

The testimony at trial established the following. Andrea lived in a fourth-floor apartment in Silver Spring with her husband and A.M.F., her then three-year-old son. On September 2, 2019, neighbors observed Andrea acting erratically in the hallway outside her apartment. Three neighbors who lived on the same floor testified at trial about the events that they observed that morning: Alexander Akinybmi, Sheila Cherry, and Earnest Johnson.

Alexander Akinybmi saw Andrea in the hallway carrying a naked, crying child on her back. He entered his car to go to work when he "heard a scream . . . coming from the fourth floor[,]" so he "ran back upstairs." He saw Andrea and the child still in the hallway, and other people had gathered in the hallway as well.

Sheila Cherry heard a "very loud scream[,]" so she "ran to [her] door and [she] looked down the hall and [she] saw some commotion going on." Cherry's son then took A.M.F. from Andrea, and Cherry stayed in her apartment with A.M.F. as paramedics arrived. Cherry observed a mark on A.M.F.'s body.

Earnest Johnson heard a baby crying in the hallway. He testified as follows: "I was concerned so I walked out in the hallway, opened the door and I seen the lady and the baby."[2] When he opened his apartment door, that woman tried to enter his apartment: "She came in with the baby in her arms and tried to bust through the door, my door. My apartment door while I had it open." When Johnson emerged from his apartment, other individuals were holding down the woman who had tried to enter his apartment.

[2] Johnson did not identify Andrea at trial.

The Montgomery County Police Department responded to the scene. Officers Justin Tierney, James Herman, and James Donahue testified about their response and observations. Officer Tierney responded to the fourth floor of the apartment building, placed Andrea into custody, and called an ambulance for A.M.F. to receive medical treatment. Officer Herman helped handcuff Andrea and checked on A.M.F.'s safety before A.M.F. was transported to Suburban Hospital. Officer Herman observed that A.M.F. "was not wearing any clothing and . . . had a wound on his left buttocks. It was circular in nature and had impression marks in it." Officer Donahue went to Suburban Hospital with A.M.F.

Amanda Shoemaker, a pediatric nurse at Suburban Hospital, testified that she saw a wound on A.M.F.'s arm and buttocks. Sandra Carlin, a forensic nurse examiner, performed an examination of A.M.F. two days after the incident and testified about the injuries on A.M.F.'s arm and buttocks.

The State's case also included the testimony of Andrea's sister, Francesca Andrea, who testified that she spoke to the appellant at 1:21 a.m. on the morning of the incident. Francesca determined that no one else was in the apartment with the appellant besides A.M.F.

Detective James Kafchinski testified about the interview of Andrea that he conducted with Detective Williams. The State introduced a redacted version of the interview into evidence at trial. In that redacted interview, Andrea admitted that she inflicted harm to her son and that she was alone with her son in the apartment at the time of the incident. The defense objected to the admission of the redacted interview, arguing

that the full interview should be entered into evidence because the redacted interview unfairly lacked context. Over the defense's objections, the court admitted the redacted interview and a transcript of the redacted interview.

We reviewed the full, unredacted interview, which was not introduced into evidence at trial. The unredacted interview included numerous statements that Andrea made about her mental health surrounding the incident. During the unredacted interview, Andrea discussed what she did and did not remember:

> And then at some point, I something telling me to bite [A.M.F.] on the butt . . . . And it kept coming back. And so I do remember -- I remember the voice telling me to do that. I don't remember when I did it and I also do not remember inflicting harm upon myself. Fast forward to the -- I do remember going out of my apartment, like, kicking and yelling and banging on the doors of my -- of the people that live on my hall . . . and it took five people to like pin me down because I like had just so much energy.

Also during the unredacted interview, Andrea recalled cutting a cockroach in half in the middle of the night, eating half, and forcing A.M.F. to eat the other half. Andrea stated, "that's when I like really lost my brain[.]"

At the close of the State's case, Andrea moved for a judgment of acquittal as to three of the counts. Andrea argued that there was no testimony or evidence offered as to strangulation of A.M.F. or forcing A.M.F. to eat a cockroach. Andrea also contended that the evidence adduced of injuries to A.M.F.'s arm did not meet the elements of second-degree child abuse. The court granted judgments of acquittal as to two of the counts (strangulation and forcing the child to eat a cockroach), but denied the motion related to biting A.M.F.'s arm.

The jury found Andrea guilty of the two remaining counts: "Child Abuse - Second Degree on [A.M.F.] (injury on buttocks)" and "Child Abuse - Second Degree on [A.M.F.] (injury on arm)[.]"

Andrea filed a motion for a new trial, arguing that the court erred in failing to admit the entire police interrogation under the doctrine of verbal completeness. She supplemented the motion for a new trial because she learned that technical issues caused the court to inadvertently fail to record part of the voir dire process. After a hearing, the court denied Andrea's motion for a new trial.

We supply additional facts below as needed.

DISCUSSION

I.

Andrea contends that the circuit court erred under the rule of completeness. According to Andrea, the court erred when it denied Andrea's request to admit the rest of her video interview with police. The State asserts that this claim was not preserved. The State also argues that even if this claim were preserved, the court did not err because the rest of the interview was irrelevant to the second-degree child abuse charges that Andrea faced at trial.

We disagree with the State's contention that this argument was waived. Md. Rule 8-131(a) provides as follows:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The State contends that Andrea is arguing that the court should have admitted specific short sections of the interview that were redacted. According to the State, that argument is unpreserved because Andrea took an all-or-nothing approach at trial when she argued that the whole interview should be admitted. In our view, Andrea is making the same argument that she made before the trial court: "the court erred in not admitting the remainder of the interview[.]" Thus, this issue is preserved.

"Determining whether separate statements are admissible under the doctrine of verbal completeness is . . . a discretionary act, to be reviewed for an abuse of discretion." *Otto v. State*, 459 Md. 423, 446 (2018). An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted). "The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Evans v. State*, 396 Md. 256, 277 (2006) (quotation marks and citations omitted).

The Court of Appeals examined the doctrine of verbal completeness in *Otto v. State*, 459 Md. 423. The doctrine "finds its roots from two sources: the common law and Maryland Rule 5-106[,]" and it allows for a party to move to admit the rest of a statement or conversation that is introduced in evidence. *Id*. at 447. "At common law, a party seeking to admit evidence" under this doctrine, "could admit the remaining conversation or writing during the party's case-in-chief." *Id*. Md. Rule 5-106 codified the common law doctrine of verbal completeness and modified it to permit "writings or recorded

statements to be admitted earlier in the proceeding than the common law doctrine." *Id*. Md. Rule 5-106 provides as follows: "When part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." And when "the evidence sought to be admitted is not otherwise admissible, the evidence may be admitted, in fairness, 'as an explanation of previously-admitted evidence and not as substantive proof.'" *Otto*, 459 Md. at 447 (quoting *Conyers v. State*, 345 Md. 525, 541 (1997)). Md. Rule 5-106 "does not change the requirements for admissibility under the common law doctrine[,]" so the doctrine "is the proper lens through which to analyze [the] claim." *Id.* at 447-48.

The Court in *Otto* outlined the limitations of the doctrine of verbal completeness. First, three principles limit an opposing party's ability to introduce the rest of a statement or conversation that is in evidence:

> [1] No utterance irrelevant to the issue is receivable;
>
> [2] No more of the remainder of the utterance than concerns the same subject, and is explanatory of the first part, is receivable;
>
> [3] The remainder thus received merely aids in the construction of the utterance as a whole, and is not in itself testimony.

Id. at 449-50 (citation omitted). Second, "where the remaining evidence, if otherwise inadmissible, is more prejudicial than probative, a trial court may exclude the evidence." *Id*. at 451. And third, "a statement does not have to be independently admissible" to come into evidence, but "evidence that is otherwise inadmissible does not become admissible purely because it completes the thought or statement of the evidence offered

pursuant to the doctrine of verbal completeness." *Id*. at 451-52. "Inadmissible evidence will only be admitted by the rule of completeness if it is particularly helpful in explaining a partial statement and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time, or confusion." *Id*. at 452.

The redacted video-recorded interview that was admitted into evidence included these statements between Detective Kafchinski and Andrea:

> [DETECTIVE]: So do you know why we wanted to talk to you today?
>
> [ANDREA]: Yeah. Because of the incident that happened Monday morning at around dawn, like, I don't know exactly what time. But I know that the sun -- it was like around the time that the sun, the sun rose.
>
> [DETECTIVE]: Okay.
>
> [ANDREA]: I inflicted harm upon my son and upon myself.
>
> [DETECTIVE]: Okay.
>
> [ANDREA]: I didn't know that I did it to myself until a couple of days later. I thought somebody had inflicted harm upon me.
>
> [DETECTIVE]: Okay. So let's go back to the beginning.
>
> [ANDREA]: Sure.
>
> [DETECTIVE]: What can you tell us--
>
> [ANDREA]: Sure.
>
> [DETECTIVE]: --about that incident?
>
> [ANDREA]: So can I -- can I rewind like three days?
>
> [DETECTIVE]: Yeah, yeah. Go back as far as you need to if it's pertinent to what happened.

* * *

> [ANDREA]: There was nobody else--
>
> [DETECTIVE]: Uh-huh.
>
> [ANDREA]: --in the apartment.
>
> [DETECTIVE]: Okay.

The unredacted portion of the interview, which we have also reviewed, included statements that Andrea made about her mental health, such as the following:

> [ANDREA]: So but yeah, I just remember, I remember -- yeah, I remember like the script telling me to do it and I remember resisting, but I don't remember, I don't remember the actual moment that I did it.
>
> [DETECTIVE]: Do you remember was it a specific voice, like, belonging to a certain person?
>
> [ANDREA]: No. No, it was more like a -- it was more just like a script in a play, like, that, like, this was like an action that I was supposed to do.
>
> [DETECTIVE]: Okay. And what did it say specifically about [A.M.F.]?
>
> [ANDREA]: It said bite him --
>
> [DETECTIVE]: Okay.
>
> [ANDREA]: -- in the butt.
>
> [DETECTIVE]: Did it say anything else?
>
> [ANDREA]: No.
>
> * * *
>
> [DETECTIVE]: All right. And so you say that you don't remember biting [A.M.F.], but you also, one of the first things you said to us was that you inflicted injury on him.
>
> [ANDREA]: Correct.

> [DETECTIVE]: How do you know that?
>
> [ANDREA]: Because I -- because the voice told me to bite him.
>
> [DETECTIVE]: Okay. So you're just assuming that that's where his injuries came from?
>
> [ANDREA]: Correct.
>
> [DETECTIVE]: Okay.
>
> [ANDREA]: Well, yeah, because they said it -- it was just me and him.

Throughout the unredacted interview, Andrea made statements about her mental health that intertwined with her recollection of the incident.

The circuit court recognized two overarching reasons why the rule of completeness does not apply here. First, Andrea withdrew her NCR plea before trial. Second, the charges at trial (second-degree child abuse) were general intent crimes. We address each of those points.

In January 2021, Andrea entered a plea of not criminally responsible under Md. Rule 4-314. Before the June 2021 trial, Andrea withdrew that plea. When ruling on the motion for a new trial, the court examined Andrea's withdrawal of the NCR plea and correctly found as follows:

> I can't allow in the back door a not criminally responsible excuse to come in as a defense, and if you abandon that defense then you are not permitted to go around the corner and let it in.

We agree with the trial court's cogent analysis. "No utterance irrelevant to the issue is receivable" under the rule of completeness. *Otto*, 459 Md. at 449 (citation omitted). At trial, the State proceeded only on counts of second-degree child abuse. 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, Crim. Law § 3-601(d)(1)(i). 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." Crim. Law § 3-601(a)(2). The mens rea of child abuse "does not involve an accused's subjective belief." *Fisher*, 367 Md. at 270.

Instead, child abuse is a "general intent crime, and its mens rea requires only intentionally acting or failing to act under circumstances that objectively meet the statutory definition of abuse." *Id*. The child's "injury must be intentional in the sense that it is non-accidental[.]" *Id*. at 279.

Here, the unadmitted portion of the interview dealt with Andrea's mental state. The charges at trial were general intent crimes, and thus, the court properly determined that the rule of completeness did not require the introduction of the rest of the interview because the rest of the interview was irrelevant. *Otto*, 459 Md. at 449. As the court noted, "this is a case where there [are] bite marks both on the arm and the buttocks of the child and there isn't any argument that it is accidental. It's a general intent crime and with a general intent crime, your state of mind is not relevant." We find no error in the court's exercise of discretion.

II.

Next, Andrea argues that the court erred in admitting a transcription of her redacted interview with police. Relying on *Raimondi v. State*, 265 Md. 229, 232 (1972),

Andrea reasons that the court erred because it did not determine whether admission of that transcript would prejudice her. Andrea contends that the transcript was inaccurate, improperly certified, and unauthenticated. According to Andrea, the transcript was also inadmissible under the best evidence rule. The State claims that Andrea's arguments about the introduction of the transcript are mostly unpreserved and otherwise lack merit.

As a threshold matter, we disagree with the State's contention that Andrea's arguments are unpreserved. When the prosecutor moved to admit the transcript and audio together, Andrea's defense counsel objected as follows:

> [DEFENSE COUNSEL]: So, our position, Your Honor, is as duplicative that putting a transcript in is putting words, and the jury is free to hear what they hear in this video. It's not a purview. It's someone else who was uncertified transcriber to say what they hear; and this takes what the jury is going to hear from this purview and take it out of their hearing and what they remember it to be in the jury room. Now they can take the video back and relisten to it all they want, but this transcript specifically takes out of the jury's purview what was said and their authority is these words are not what the jury hears. It's up to the jurors to decide, not the transcript that's unofficial, unverified and even has the wrong date on it.

In sum, defense counsel argued that the transcript would unfairly prejudice the jury's interpretation of the video-recorded interview. Thus, we hold that the issues now presented were raised under Md. Rule 8-131(a).

Turning to the merits of Andrea's arguments, the trial court cited *Ringe v. State*, 94 Md. App. 614 (1993), when explaining its reasons for admitting the transcript:

> THE COURT: I'm looking at the case of <u>Ring[e] v. State</u>, and it indicates we shall comment on the procedure utilized by the parties below in relation to the videotaped statement in order that the appellate process may be easier[.]

* * *

> So, given the fact that in Ring[e] v. State, the Court of Special Appeals at 94 Md. App. 614 suggests this is a proper procedure, I'm going to allow the transcript in.

To be sure, *Ringe v. State* involved the admission of a videotaped police interview at a suppression hearing before a judge. 94 Md. App. at 618. To promote effective appellate review, the *Ringe* Court provided guidance in 1993 on the admission of audio-recorded statements:

> As we recall, the customary trial court practice in reviewing statements that have been audio recorded is that a transcript of the statement is made from the audio tape prior to its presentation at trial. With proper authentication, the transcribed statement, signed or otherwise, is then offered in evidence. The tape is also offered as evidentiary and record support for the transcript. It is then only necessary to refer to the tape in the event of disputes as to the accuracy of the transcription or to ascertain something—demeanor for example—not accurately reflected in the transcript. In lieu of that procedure, the court reporter should transcribe that which is on the audio or video tape reviewed by the trial court so that there will be a written record to assist the parties and the courts in the appellate process. If either transcription process is used, the parties can then refer to the page numbers of the transcript that contain the matter they contend supports their various positions.

Id. at 623 (footnote omitted).[3]

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[3] In 2009, the Court of Appeals added Md. Rule 4-322(c):

> (1) *Recording*. A party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial shall:
>
> > (A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, so that it is available for future transcription;

(continued…)

Although *Ringe* is not directly on point, the court was correct to admit the transcript because the transcript was admissible for other reasons. *See Davis v. State*, 207 Md. App. 298, 306 n.2, *cert. denied*, 429 Md. 529 (2012) ("[I]t is within our province to affirm the trial court if it reached the right result for the wrong reasons[.]" (quotation marks and citation omitted)).

Andrea argues that the transcript was not properly authenticated. Md. Rule 5-901(a) provides as follows: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." "[T]he burden of proof for authentication is slight[.]" *Dickens v. State*, 175 Md. App. 231, 239 (2007). Md. Rule 5-901(b)(4) lists circumstantial evidence as a method of authentication: "Circumstantial evidence, such as appearance, contents, substance, internal patterns,

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> (B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record; and
>
> (C) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court.
>
> (2) *Transcript of Recording*. A party who offers or uses a transcript of the recording at a hearing or trial shall ensure that the transcript is made part of the record and provide an additional copy to the court.

Md. Rule 4-322(c). *See also* Order of the Standing Committee on Rules of Practice and Procedure 28-29 (September 10, 2009).

location, or other distinctive characteristics, that the offered evidence is what it is claimed to be."

There was sufficient circumstantial evidence of the transcript's authenticity. The cover page of the transcript states, "INTERVIEW OF MARIE CLAIRE ANDREA[.]" The end of the transcript contained a certificate that was signed by the transcriber: "DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages were transcribed to the best of our ability. The transcription is not guaranteed to be verbatim but will be as accurate as the quality of the media permits."[4] Andrea contends that "there were many inaccuracies in the transcript including referring to Officer Kafchinski as 'Officer Catch' and that the interview occur[r]ed September 12, 2019, when the interview took place September 10, 2019." We have reviewed the transcript and the video-recorded interview, and we are satisfied that the inaccuracies in the transcript are wholly inconsequential and non-substantive. The date of the interview was not disputed at trial. And none of the inaccuracies relate to the substance of Andrea's confession.

Next, we address Andrea's claim that the admission of the transcript violated the best evidence rule. The "best evidence rule," Md. Rule 5-1002, states that "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." In general, Rule 5-1002 dictates that, when a writing, recording, or photograph is "closely

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[4] Before admitting the transcript, the court reviewed the full, unredacted transcript and engaged in a comprehensive colloquy with both parties about its admissibility. Thus, the court could observe the circumstantial evidence of the transcript's authenticity.

related to a controlling issue" (Md. Rule 5-1004(d)), a party must introduce the original (Md. Rule 5-1002) or a duplicate (Md. Rule 5-1003), unless the original has been lost or destroyed, is not reasonably obtainable, or is in the possession of a party-opponent who has refused to produce it. *See* Md. Rule 5-1004(a)-(c).

Nonetheless, "[i]t is well settled that a properly authenticated transcript of a tape recording is admissible." *Imes v. State*, 158 Md. App. 176, 181 (2004). *See also Marshall v. State*, 174 Md. App. 572, 578 (2007) (the defendant was not entitled to exclusion of a transcript of a taped phone conversation prepared by a detective). In *Imes*, this Court recognized a defendant's right to request a jury instruction on the jury's consideration of a transcript:

> appellant was entitled to request a jury instruction to the effect that the transcript was being given to you as an aid or guide to assist you in listening to the tapes which are not in and of themselves evidence. You alone should make your own interpretation of what appears on the tapes based on what you heard. If you think you heard something differently than appeared on the transcript, then what you heard is controlling.

Imes, 158 Md. App. at 182 (cleaned up). Andrea, however, did not request that instruction.

According to Andrea, the court erred under *Raimondi v. State*, 265 Md. 229 because it did not determine whether admission of the transcribed confession would prejudice Andrea. We disagree. Raimondi argued that the trial court erred "when it permitted transcripts of electronic recordings to be taken into the jury room." *Id.* at 230. The recordings were transcribed because the recordings were inaudible at times. *Id.* The transcripts were admitted in evidence. *Id.* "At the conclusion of the case, the jury was

permitted to take the transcripts to the jury room, again over Raimondi's objection." *Id*. Raimondi claimed "that the trial court erred in permitting the transcripts to go to the jury room because the action was not sanctioned by Maryland Rule 558[.]" *Id*. *Cf. Adams v. State*, 415 Md. 585, 600-01 (2010) (examining *Raimondi* and stating that "[n]ow, such exhibits are allowed in the jury room unless ordered otherwise, for good cause").

In holding that the trial court did not abuse its discretion, the Court of Appeals in *Raimondi* stated: "Here we are not dealing with a confession, an admission, or material of an inflammatory character. If Raimondi could have shown that he was prejudiced, *it might have been a different story*." 265 Md. at 233 (emphasis added). The *Raimondi* Court simply cautioned that the admission of transcribed confessions may require more scrutiny. Despite Andrea's contention, *Raimondi* does not require courts to make explicit on-the-record determinations about whether the admission of a transcribed confession would prejudice the defendant. Moreover, the videotaped interview, itself, was played for the jury in open court during the State's case-in-chief. The transcript "only confirmed in writing what the jury already heard[.]" *Imes*, 158 Md. App. at 182 (quotation marks and citation omitted). Thus, we find no error in the court's decision to admit the transcript.[5]

[5] Even if the admission of the transcript were an error (it was not), we would determine that it is harmless. *Dionas v. State*, 436 Md. 97, 108 (2013) ("[A]n error will be considered harmless if the appellate court is satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." (quotation marks and citation omitted)). Under our own independent review of the record, we are persuaded beyond a reasonable doubt that the admission of the transcript "'in no way

(continued…)

III.

Lastly, Andrea claims that the court erred in denying her motion for a new trial. Andrea argues that the court's inadvertent failure to record part of the voir dire process entitled her to a new trial because the trial court might have improperly denied some of her requests to strike for cause. The State responds by noting that Andrea's defense counsel did not use all her peremptory strikes, and thus no reversible error occurred.

The abuse of discretion standard of review applies to a denial of a motion for a new trial. *Jackson v. State*, 164 Md. App. 679, 700 (2005). In *Wilson v. State*, 334 Md. 469 (1994), the Court of Appeals discussed how an appellate court should react when a portion of a proceeding is unrecorded and not transcribed. Wilson's cross and redirect examinations were unrecorded because of a tape-recording error. *Id*. at 472. Wilson learned of this recording error in preparation for an appeal. *Id*. at 473. In determining whether to grant Wilson a new trial, the Court of Appeals stated, "[i]t is only when it is impossible adequately to substitute for the record . . . that the appellate court need consider a defendant's claim of deprivation of meaningful appellate review. *Id*. at 476 (citing *Smith v. State*, 291 Md. 125, 137 (1981)). The Court discussed the standard to apply under these circumstances:

> If the omission is not completely supplied, to be entitled to a new trial, the petitioner must establish that the missing material rendered his appeal meaningless, *i.e.*, that he was deprived of meaningful appellate review. To accomplish this, he has to show that the omission is not inconsequential, but is "in some manner" relevant to the appeal. We hold

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influenced the verdict[s].'" *Hurst v. State*, 400 Md. 397, 418 (2007) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

> that the petitioner met this burden in this case. Indeed, consistent with the parties' agreement, the portion of the transcript which could not be reproduced involved an issue that went to the very heart of the appeal, *i.e.*, whether the petitioner was improperly cross-examined[.]

Id. at 477.

The unavailability of a transcript, however, "does not by itself warrant a new trial." *Bradley v. Hazard Tech. Co., Inc.*, 340 Md. 202, 208 (1995). *See also Smith*, 291 Md. at 133 ("It would wreak havoc on the administration of justice to require reversal in each and every case in which it is alleged by an appellant that portions of trial testimony have not been preserved verbatim for review."). In some cases, "deciding an appeal on the merits where possible, even if a full transcript is unavailable, serves the interests of justice and judicial economy." *Bradley*, 340 Md. at 209.

During argument in support of the motion for a new trial, Andrea's counsel conceded that Andrea's peremptory strikes had not been exhausted during jury selection. As a result, the court correctly ruled that even if it had improperly denied a motion to strike a juror for cause, no reversible error occurred because Andrea had failed to exercise all her peremptory challenges. Indeed, Maryland courts have consistently denied claims alleging that a trial court erred in failing to strike a prospective juror for cause when the defendant had failed to exhaust their peremptory challenges. *See Ware v. State*, 360 Md. 650, 664 (2000) (recognizing that it was unnecessary to decide whether the trial court erred in declining to excuse prospective jurors because Ware did not exhaust his peremptory challenges); *White v. State*, 300 Md. 719, 728 (1984) (even if the trial court erred in not striking a juror for cause, any error was waived because "the

accused ha[d] not exercised all allowable peremptory challenges"); *Morris v. State*, 153 Md. App. 480, 496 (2003) (holding that an improperly denied motion to strike for cause amounts to reversible error only when all the defendant's allowable peremptory challenges have been exercised).

Andrea's reliance on *Winder v. State*, 362 Md. 275 (2001) is misplaced. In *Winder*, the trial judge "admitted having *ex parte* communications with the jury during Appellant's trial." *Id*. at 321. Although a new trial was granted on other grounds, the Court warned, "[e]ven if the communications were innocent or insignificant, however, they still potentially prejudiced Appellant. This lapse in discretion by the trial judge disturbed the integrity of the record and prevented us and Appellant from scrutinizing effectively the improper communications on appeal." *Id*. at 323-24. Unlike in *Winder*, Andrea does not allege any improper ex parte communications by the trial court. And even if any of Andrea's motions to strike for cause were improperly denied, Andrea conceded that she failed to exercise all her peremptory strikes, and thus no reversible error would have occurred. *See, e.g.*, *Ware*, 360 Md. at 664. For these reasons, we cannot say that the court abused its discretion in denying the motion for a new trial.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.