Circuit Court for Washington County
Case No. C-021-CV-20-000123

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1057

September Term, 2020

JAMES A. CALDWELL,

v.

LIBERTY INSURANCE CORP., *et al.*

Kehoe,
Berger,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: October 18, 2021

This appeal arises from the verdict of a Washington County jury tasked with the review of two orders from the Workers' Compensation Commission ("the Commission"). The orders involved two claims that James A. Caldwell ("Caldwell"), a former employee of Volvo Powertrain of North America ("Volvo"), brought against Volvo and its insurer, Liberty Insurance Corporation ("Liberty Insurance").[1] Caldwell's claims for disability compensation stem from two distinct injuries he incurred during his employment, which rendered him unable to work. After a hearing before the Commission addressing both injuries, the Commission entered two orders that found Caldwell's workplace injuries caused him permanent partial disabilities of 25% diminished use of his left hand (wrist) and 13% diminished use of his body (back).

Caldwell petitioned for review of the Commission's orders in the Circuit Court for Washington County, and following an "essentially *de novo* trial"[2] before a jury, the jury returned a verdict affirming the Commission's findings. Claiming error with the court's verdict sheet, Caldwell timely appealed to this Court. On appeal, Caldwell asserts that the court abused its discretion when it gave the jury a verdict sheet that asked whether the Commission's findings of Caldwell's disabilities percentages were correct. Caldwell

[1] For clarity in this appeal, we will refer to Volvo and Liberty collectively as "Liberty" and individually as indicated above.

[2] In an "essentially *de novo* trial," the Commission's order is evidence before the fact finder—in this case, the jury—which is considered prima facie correct; however, based on all the evidence before it, the fact finder is free to conclude otherwise. We discuss the effect of an essentially *de novo* trial more in depth. *See infra* Maryland Workers' Compensation Statute Appeals.

argues that the court's decision to use this verdict sheet wrongfully converted his essentially *de novo* jury trial into a quasi-administrative appeal, denying him the proper review. For the reasons stated below, we discern no abuse of discretion, and thus we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Current Litigation

Caldwell began his career at Volvo (formerly Mack Truck) in 1987, where he held a variety of jobs at Volvo's manufacturing plant during his tenure. During his employment with Volvo, Caldwell suffered two separate injuries in August 2015 and in February 2016. On August 24, 2015, while he was working as an engine tester for Volvo, Caldwell was removing a rubber grommet from an engine bolt to connect electrical wiring. As Caldwell pulled the grommet off the bolt, he injured his left hand (wrist). Caldwell received medical treatment for his injury and was placed on "light duty work assignment." On February 16, 2016, Caldwell injured his back when he was walking into work. He slipped and fell on ice in Volvo's parking lot. Caldwell sought medical treatment and was diagnosed with damage to his sciatic nerve. Despite months of medical treatment, Caldwell was physically unable to continue performing his job at Volvo.

Caldwell brought both claims of injury before the Commission, and the Commission held a consolidated hearing on both claims on February 10, 2020. After the hearing, the Commission entered two separate orders, one for each of Caldwell's respective injuries. For the wrist injury, the Commission found that Caldwell had a permanent partial disability that resulted in 25% loss of use to his left hand. For the back injury, the Commission found

that Caldwell had a permanent partial disability that resulted in "18% industrial loss of use of the body, 13% [was] reasonably attributable to the accidental injury (back) and 5% [was] due to pre-existing conditions (back). . . ." Caldwell petitioned for review of the Commission's orders in the Circuit Court for Washington County. Liberty filed a cross-petition claiming error with the Commission's findings, arguing that Caldwell did not suffer any permanent partial disability.

Pursuant to the Maryland Workers' Compensation statute, Md. Code, Labor and Employment Article ("LE") § 9-745 (2016 Repl. Vol.), Caldwell elected to have a jury trial to determine the extent of his disabilities on appeal. The Commission's two orders were admitted into evidence. In addition, both sides called expert witnesses to testify to the extent of Caldwell's permanent partial disabilities. Caldwell's expert testified that Caldwell had a greater percentage of permanent partial disability for both injuries than the percentage found by the Commission. Liberty's experts testified that Caldwell had no permanent partial disability as a result of the injuries.

After the conclusion of all the evidence, Caldwell and Liberty each proposed a verdict sheet for the court to provide to the jury. Liberty's proposed verdict sheet asked the jury if it agreed with the Commission's percentage valuation of Caldwell's disabilities and, if not, asked it to state the percentage values of Caldwell's permanent partial disabilities.[3] In

[3] Liberty's proposed verdict sheet read:

> 1. Do you agree with the finding of the Maryland Workers' Compensation Commission in the February 10, 2020 Order finding 25% permanent partial disability to the left hand (wrist) as it relates to the August 24, 2015 claim? If "Yes", skip to No. 3. If "No", go to No. 2.

contrast, Caldwell's proposed verdict sheet was limited essentially to the latter question: asking the jury to determine the percentage of disabilities, without reference to the Commission's findings.[4] After consideration of the proposed verdict sheets, the arguments from both parties, and the relevant case law, the circuit court gave the jury the following verdict sheet, which closely mirrored Liberty's proposed verdict sheet, but with minor modifications:[5]

> 1. Was the Maryland Workers' Compensation Commission correct in the February 10, 2020 Order where it found 25% permanent partial disability to the left hand (wrist) as it relates to the August 24, 2015 claim? If "Yes", skip to No. 3. If "No", go to No. 2.
> 2. What percentage of permanent partial disability, if any, do you find applicable as it relates to the left hand (wrist) in connection with the August 24, 2015 claim?
> 3. Do you agree with the finding of the Maryland Workers' Compensation Commission in the February 10, 2020 Order finding 18% overall permanent partial disability to the back, 13% related to the February 16, 2016 claim and 5% due to pre-existing conditions? If "Yes", stop here. If "No", go to Nos. 4 and 5.
> 4. What percentage of permanent partial disability to the back, if any, do you find applicable to the February 16, 2016 claim?
> 5. What percentage of permanent partial disability to the back, if any, do you find that pre-existed February 16, 2016?

[4] Caldwell's proposed verdict sheet read:

> 1. Expressed in percentage terms, what amount of permanent partial disability does Mr. James Caldwell have as a result of the August 24, 2015 work injury to his left hand/wrist?
> 2. Expressed in percentage terms, what amount of permanent partial disability does Mr. James Caldwell have as a result of the February 16, 2016 work injury to his back?
> 3. Expressed in percentage terms, what amount of permanent partial disability does Mr. James Caldwell have to his back as a result of conditions that pre-existed the February 16, 2016 work injury?

[5] In sum, the court replaced the "do you agree with" language from Liberty's proposed verdict sheet with "was the [Commission] correct."

2. What percentage of permanent partial disability, if any, does Claimant James Caldwell have to the left hand (wrist) in connection with the August 24, 2015 claim. (Go to No. 3)
3. Was the Maryland Workers' Compensation Commission correct in the February 10, 2020 Order where it found 18% overall permanent partial disability to the back, with 13% related to the February 16, 2016 claim and 5% to pre-existing condition? If "Yes", stop here. If "No", go to Nos. 4 and 5.
4. What percentage of permanent partial disability to the back, if any, does Claimant James Caldwell have to the back as a result of the February 16, 2016 incident.
5. What percentage of permanent partial disability to the back, if any, does Claimant James Caldwell have to the back that pre-existed February 16, 2016.

Caldwell objected to questions 1 and 3, as those questions asked the jury to decide whether the Commission's findings were "correct" with respect to Caldwell's permanent partial disabilities to his left hand and his back. Caldwell provided the following explanation for his objection:

> [T]he issue with listing the verdict sheet with the finding of the Commission and asking who is correct is that the Commission decision is a piece of evidence and to put that piece of evidence on the verdict sheet elevates it to more than what it is and changes the weight that the jury could potentially apply to it. I think it would be equally wrong to have a question, you know, on there say, "Was Dr. Franchetti correct in his finding of 41 percent impairment of the hand? Do you agree with that?" Because that's a piece of evidence in the case.

The court overruled Caldwell's objection and gave the verdict sheet to the jury. After deliberation, the jury found that the Commission's findings regarding each of Caldwell's permanent partial disability claims were correct. This timely appeal followed.

Maryland Workers' Compensation Statute Appeals

Given the unique appellate procedure for claims arising from the Maryland Workers' Compensation statute, we first offer a brief overview of the statute's avenues of appeal before addressing the issue presented.

In response to increasing workplace injuries, Maryland enacted the Workmen's Compensation Act in 1914, which created the State Industrial Accident Commission (now the State Workers' Compensation Commission), an independent body responsible for overseeing claims of workplace injuries. 1914, ch. 800, § 9. The statute is now known as the Workers' Compensation Act under title nine of the Maryland Labor and Employment Article. LE § 9-745. While the name of the statute has changed, and the statute itself has undergone modifications since its inception, it has in large part maintained its original purpose, affording injured workers a means of compensation. LE § 9-745.

Under the Workers' Compensation statute, an employee that suffers an accidental workplace injury may bring a claim before the Commission within sixty days of the injury to seek disability payments and medical coverage. LE § 9-709. The Commission may investigate the claim and, upon the request of either party, shall hold a hearing on the claim. LE § 9-714. The Commission, as the original fact finder, must determine the percentage of permanent total disability based on the facts of the case. *Dent v. Cahill*, 18 Md. App. 117, 127 (1973). The employee-claimant bears the burden of proof that his or her injury falls within the class of injuries the statute covers. *Mut. Chem. Co. v. Thurston*, 222 Md. 86, 94 (1960). After the Commission issues an order, any interested parties may file to seek judicial review of the Commission's decision. LE § 9-737.

The Workers' Compensation statute offers two avenues of appeal: (1) judicial review of the facts and the law—a quasi-administrative appeal—or (2) an essentially *de novo* trial. LE § 9-745. The first avenue under § 9-745 "replicates the routine appeal process from administrative agency decisions generally." *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 364 (1997). In this avenue, the circuit court is limited to examining the record of the Commission's proceedings and may not consider any new evidence. *Bd. of Educ. for Montgomery Cnty. v. Spradlin*, 161 Md. App. 155, 170 (2005). The circuit court's review is limited to whether the Commission "1) acted within its power and 2) correctly construed the law and facts."[6] *Id.* at 169 (quoting *S.B. Thomas*, 114 Md. App. at 364).

The second avenue of appeal under § 9-745 provides for an essentially *de novo* trial in the circuit court. LE § 9-745(d); *see Richardson v. Home Mut. Life Ins.*, 235 Md. 252, 255 (1964) ("Although the statute does not use the term, its directions would seem to contemplate a trial which essentially is *de novo*."). Unlike its quasi-administrative appeal counterpart, the essentially *de novo* avenue permits parties to present, and the fact finder to consider, evidence that was not before the Commission. *Abell v. Goetze, Inc.*, 245 Md. 433, 437–38 (1967). There is "no requirement that the *de novo* fact finder consider the record before the Commission[,] [which] is simply one possible evidentiary source, among many[.]" *Spradlin*, 161 Md. App. at 187; *see Harvey v. Roche & Son*, 148 Md. 363, 366

[6] In terms of whether the Commission correctly construed the facts, we have clarified that this question is limited to assessing whether the fact finding was, "as a matter of law, clearly erroneous because [it was] not supported by legally sufficient evidence." *Spradlin*, 161 Md. App. at 168–69.

(1925). Evidence in an essentially *de novo* trial can be "1) on the basis of the record before the Commission alone (by reading it or having it read to them); 2) by live witnesses and fresh evidence alone; or 3) by a combination of the two." *Spradlin,* 161 Md. App. at 176.

Another key distinction in the essentially *de novo* avenue concerns the weight of the Commission's order and its admission in evidence. *Spradlin,* 161 Md. App. at 176, 190. In *Spradlin,* Judge Moylan elucidated the distinction between a traditional *de novo* and an essentially *de novo* trial:

> A true trial *de novo*, of course, would put all parties back at "square one," to begin again before the circuit court just as if the adjudication appealed from had never occurred. In what is "essentially a trial *de novo*," by contrast, that is by no means the case. The past is not erased, but may serve as prologue to the upcoming result in no less than four respects. The decision of the Commission, far from being relegated to the archives, 1) may be offered as substantive evidence before the *de novo* fact finder; 2) may be the subject of a jury instruction at the *de novo* trial; 3) may, if necessary, satisfy the burden of initial production at the *de novo* trial; and 4) will sometimes shift the allocation of the burdens of proof (both production and persuasion) at the *de novo* trial.
>
> The reasons for these differences between an essential trial *de novo* and a true trial *de novo* is to be found in the provisions of [LE] § 9-745(b).

161 Md. App. at 190. Judge Moylan underscored the principle that the Commission's decision is presumed prima facie correct in an essentially *de novo* trial. LE § 9-745(b). To effectuate this provision of the statute, the jury "should know *what* decision is presumed correct and *who* made that decision." *Holman v. Kelly Catering, Inc.,* 334 Md. 480, 486 (1994) (emphasis in original). In an essentially *de novo* trial, the jury is ordinarily informed of this presumption in the form of Maryland Civil Pattern Jury Instruction ("MCPJI")

30:1.[7] Maryland appellate courts have long held this method to be an appropriate means of informing the jury of the presumption of the Commission's prima facie correctness. *Id.*; *see Larkin v. Smith*, 183 Md. 274, 284 (1944); *Coastwise Shipbuilding Co. v. Tolson*, 132 Md. 203, 206–07 (1918). With the significance of an essentially *de novo* trial in mind—the Commission's order is evidence and presumed prima facie correct—we turn to Caldwell's question presented.

ISSUE PRESENTED FOR REVIEW

On appeal, Caldwell presents one question for our review that we rephrase as follows: Did the trial court abuse its discretion by asking the jury, via the verdict sheet, to

[7] MPJI-Civ 30:1 reads as follows:

> This case has been heard and decided by the Workers' Compensation Commission. The [Employee is] [Employer and Insurer are] appealing the decision of the Commission. (continued…)
>
> The Commission determined that (insert findings). This decision is presumed to be correct. The [Employee has] [Employer and Insurer have] the burden of proving by a preponderance of the evidence that the decision is wrong. In meeting this burden the [Employee] [Employer and Insurer] may rely on the same, less or more evidence than was presented to the Commission.
>
> The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence.
>
> In order to prove something by a preponderance of the evidence a party must prove that it is more likely so than not so. In other words, a preponderance of evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.
>
> In determining whether a party has met the burden of proof you should consider the quality of all of the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.
>
> If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

determine whether the Commission was correct?[8] For the reasons stated below, we conclude that the trial court did not abuse its discretion.

DISCUSSION

I. STANDARD OF REVIEW

We will not reverse a circuit court's use of a particular format on a verdict sheet absent an abuse of discretion. *Applied Indus. Techs. v. Ludemann*, 148 Md. App. 272, 287 (2002) (explaining that Maryland Rule 2-522 "gives the court the authority to design submissions to the jury and to format the jury's findings"); *Owens–Corning Fiberglas Corp. v. Garrett*, 343 Md. 500, 525 (1996); Md. Rule 2-522. A trial court abuses its discretion when "no reasonable person would share the view taken by the trial judge." *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009). Under this standard, this Court does not reverse a decision solely because we would have made a different ruling. *Consolidated Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011). Even if we conclude that a trial court abused its discretion, we will not reverse for harmless error. *Crane v. Dunn*, 382 Md. 83, 91 (2004). We will not reverse unless the appellant shows that prejudice accompanied the trial court's error. *Crane v. Dunn*, 382 Md. 83, 91 (2004). The object of the appellate inquiry "is not the possibility, but the probability of prejudice" in the trial court's error. *Consolidated Waste Indus. Inc.*, 421 Md. at 219–20.

[8] Caldwell phrases the issue as, "Did the trial court err by asking the jury whether the commission was correct and converting the de novo workers' compensation appeal into an administrative review?"

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY INCLUDING THE PRESUMPTION OF THE COMMISSION'S PRIMA FACIE CORRECTNESS ON THE VERDICT SHEET.

Caldwell maintains that the court erroneously elevated the Commission's orders above the remainder of the evidence at trial when, after providing MCJPI instruction 30:1, it asked the jurors on the verdict sheet whether the Commission's decisions as to each disability calculation were "correct." Caldwell accepts that the Commission's orders are prima facie correct but contends that the effect of the trial court's error was that it converted his essentially *de novo* jury trial into a quasi-administrative review of the Commission's decision. In response, Liberty argues that the verdict sheet properly articulated the relevant burden of proof set forth in § 9-745(b). We agree with Liberty that the trial court did not abuse its discretion.

A. The Verdict Sheet Captured the Presumed Prima Facie Correctness of the Commission's Decision.

Pursuant to Maryland Rule 2-522 (b)(2)(A): "The court may require a jury to return a verdict in the form of written findings upon specific issues. For that purpose, the court may use any method of submitting the issues and requiring written findings as it deems appropriate[.]" Md. Rule 2-522. "[T]he verdict sheet itself is a *tool* for the jury to utilize in deciding its verdict *but it does not constitute the verdict*." *Ogundipe v. State*, 191 Md. App. 370, 381 (2010) (emphasis added).[9] Similarly, the purpose of jury instructions is to inform the jury of the law pertinent to the case before it. *Hartman v. Meadows*, 243 Md. 158, 163

[9] A verdict consists of (1) an oral announcement, (2) unanimity, except in the event of a defendant's waiver, and (3) hearkening, which "removes the case from the jury's further consideration." *Ogundipe*, 191 Md. App. at 380.

(1966); Md. Rule 2-520 (stating that the court gives jury instructions prior to jury deliberations, orally or in writing, which is within the court's discretion).

As previously noted, during an essentially *de novo* trial, the jury is typically informed of the presumption of correctness through a jury instruction, but the jurors may evaluate the evidence as they see fit. *See Kelly Catering, Inc.*, 96 Md. App. at 275 ("[T]rial judges, in instructing juries, must carefully avoid suggesting that the Commission's decision is binding upon the finder of fact. *It is not.* The Commission's decision is merely evidence of a particular fact (or facts) which, as with all evidence, the jury is free to disregard if it finds it to be incredible.") (emphasis added). In considering the circuit court's discussion of the presumption of correctness on the verdict sheet, rather than the jury instructions, our opinion in *Applied Industries Technologies v. Ludemann* is instructive. 148 Md. App. at 287–88.

In *Applied Industries*, an employee suffered two injuries during his employment and filed worker's compensation claims for each. *Id.* at 278. The employee could not remember the specific dates that each injury occurred but remembered the general timeframe. *Id.* at 279. The Commission denied both claims, and the employee sought judicial review, electing to have an essentially *de novo* jury trial. *Id.* At the close of the employee's case, the employer made a motion for judgment on the basis that the employee could not recall the specific dates of each injury. *Id.* at 280. The court denied the motion, stating that "[it was] not worrying about the dates. [The Commission's] concern was whether or not there was an accidental injury . . . which is the same question that the jury has." *Id.* After providing the jury with instructions, the court offered the jury the following verdict sheet:

1. Was the Workers' Compensation Commission correct in its orders that the Claimant did not suffer an accidental injury arising out of and in the course of his employment?

A. First accident: yes____ no_____
B. Second accident: yes____ no____

Id. at 281. The employer objected, arguing that the lack of dates on the verdict sheet permitted the jury to conclude that each accidental injury had occurred at any time. *Id.* The trial court overruled the objection and submitted the sheet to the jury. *Id.* After deliberation, the jury returned a verdict in favor of the employee—finding that the Commission was incorrect in concluding that the employee did not suffer two accidental injuries during his employment. *Id.* at 281–82.

The employer appealed to this Court and argued that the verdict sheet's use of the term "accident" was suggestive of a particular result. *Id.* at 287. In concluding that the trial court did not abuse its discretion, we explained:

> The verdict sheet asked the jury to decide whether the Commission was correct in determining that [employee] did not sustain the two alleged accidental injuries in the course of his employment. The use of the word accident did not suggest the answer to the question that was before the jury. This is all the more true given that the occurrence of the accidents themselves was never called into serious question; instead it was the timing and circumstances under which they occurred that the jury had to resolve. . . . The jury was asked to determine only if the Commission was correct in determining that [employee] did not sustain compensable injuries. *The verdict sheet so directed the jury to this task.*

Id. at 287–88 (emphasis added).

Returning to the case before us, we conclude that the trial court did not abuse its discretion by phrasing the questions on the verdict sheet as an inquiry into whether the Commission was correct in its assessment of Caldwell's permanent partial disabilities. Just

as the term "accident" was not considered to be suggestive of a particular answer in *Applied Industries*, the use of the phrase "was the Commission correct" on the verdict sheet presented to the jury did not suggest a particular result. The question invariably invites two potential answers: either the Commission was correct *or* incorrect as to each percentage.[10]

In addition to allowing the jury to reach a different result, the verdict sheet merely incorporated the presumption of the prima facie correctness. The percentage of Caldwell's permanent disability resulting from both injuries was at the heart of the questions before the jury in the essentially *de novo* trial, and given that the Commission's decision is prima facie correct, the verdict sheet "directed the jury to this task." *Id.* at 287–88. The jurors, as fact finders, were presented with evidence at trial that included the Commission's orders; expert testimony from several doctors on behalf of Caldwell and Liberty; and Caldwell's testimony. After receiving instructions on the applicable law from the court, the jury deliberated. The jury was permitted to give as much weight to each piece of evidence as it thought appropriate and used the verdict sheet as a tool for its deliberations, before providing the court with the verdict.

Moreover, we see no reason that highlighting the presumption of correctness is appropriate for a jury instruction, but inappropriate for a verdict sheet. In an essentially *de novo* trial under § 9-745(b), the Commission's findings are treated as prima facie correct, and the trial court informs the jury "*what* decision is presumed correct and *who* made that

[10] Interestingly, the same phrasing of whether the Commission was "correct" was used in the verdict sheet in *Applied Industries* but was not at issue on appeal. 148 Md. App. at 281.

decision." *Holman*, 334 Md. at 486 (emphasis in original). The jury instruction informed the jury that the Commission's decision is prima facie correct and that the appellant has the burden of proof to demonstrate otherwise by a preponderance of the evidence. The verdict sheet, as did the jury instructions, captured this concept. A reasonable person could conclude, as the trial court did, that the phrasing of the verdict sheet was appropriate. Therefore, we reject Caldwell's assertion that the verdict sheet was impermissible.[11]

We similarly reject Caldwell's assertion that the language contained in the verdict sheet converted the essentially *de novo* trial to a quasi-administrative appeal. Caldwell argues that including the threshold question on the verdict sheet wrongfully tasked the jury to review the Commission's decision for clear error instead of reviewing the issues *de novo*. However, this argument overlooks the key distinctions of an essentially *de novo* trial. As discussed, an essentially *de novo* trial includes the Commission's decisions as one piece of evidence among many, whereas a quasi-administrative appeal is limited to whether the fact-finding and legal conclusions of the Commission were correct. More importantly, quasi-administrative appeals do not allow parties to introduce new evidence. This was not the case because both parties presented expert testimony at trial, which was evidence not before the Commission. The question of whether the Commission's findings were correct does not operate to exclude the remainder of the evidence presented at trial because the

[11] Caldwell relatedly asserts that the verdict sheet was improper because the jury is limited to deciding issues actually decided by the Commission, and the question "was the Commission correct?" was not decided by the Commission. However, implicit in whether the Commission was correct are questions concerning the percentage permanent disability, which is an issue that was decided by the Commission.

jury was free to conclude the Commission was incorrect and reach a different result based on all the evidence at trial; questions 2, 4, and 5 on the verdict sheet so directed the jury. Therefore, we discern no abuse of discretion in the circuit court's language and use of the verdict sheet, nor do we consider the phrasing of the questions in the verdict sheet to convert the essentially *de novo* trial into a quasi-administrative appeal.

B. Even Assuming the Trial Court Abused its Discretion, Caldwell Failed to Demonstrate Prejudice as a Result.

Caldwell argues that including the Commission's findings on the verdict sheet is prejudicial because it elevates the evidence beyond its prima facie correctness. Liberty responds that any prejudice Caldwell suffered, Liberty would have suffered the same—thus, there was no prejudice—because both parties argued that the Commission was incorrect. We conclude that Caldwell failed to show that prejudice accompanied his claimed error with the verdict sheet.

Even when a trial court abuses its discretion, we will not reverse "even an unreasonable decision without evidence of prejudice/harm." *Consolidated Waste Indus., Inc.*, 421 Md. at 220. The appellant bears the burden of demonstrating that prejudice accompanied the trial court's error. *Crane*, 382 Md. at 91. The focus of the appellate inquiry into the severity of the error "is on the *probability*, not the possibility, of prejudice." *Id.* (emphasis added). The appellant demonstrates prejudice "by showing that the error was likely to have affected the verdict below." *Flores v. Bell*, 398 Md. 27, 33 (2007). However, we will not reverse for harmless error, which is an error "that does not affect the outcome of the case." *Id.*; *see, e.g.*, *Consolidated Waste Indus., Inc.*, 421 Md. at 223–26 (finding

that the appellant's claimed error was not prejudicial when it failed to show that specific questions on the verdict sheet affected the outcome the case because the questions accurately stated the law and clearly presented instructions for completing the verdict sheet).

Here, assuming *arguendo* that the trial court abused its discretion, Caldwell failed to demonstrate prejudice. The verdict sheet merely asked the jury to assess the prima facie correctness of the Commission's findings, while also allowing the jury to reach a different result. The verdict sheet accurately stated the law and presented clear instructions to the jury for completing the sheet. We perceive no basis to conclude that the jury would not be able to follow such instructions. *See, e.g.*, *id.* at 226 (stating that "[i]t is not unreasonable to expect a jury to follow instructions presented clearly to them" on the verdict sheet). Questions 1 and 3 asked whether "the Commission was correct" as to each of Caldwell's injuries, and each question was immediately followed with a question that asked the jury to apportion Caldwell's disability percentages in the event it found that the Commission was incorrect. If the jury thought the commission was incorrect, it could have written a specific percentage for each disability—ultimately it did not. Implicit in the affirmance of the Commission's decision is that Caldwell did not convince the jury his percentage of disability should be increased, but also that Liberty did not convince the jury that the percentage should be decreased.[12] Because the jury was free to conclude that the

[12] Where both parties argued that the Commission was incorrect, it would be difficult, if not impossible, to determine whether the presumption of correctness favored Liberty or Caldwell.

Commission was incorrect and reach a different result, Caldwell failed to show that the verdict sheet likely affected the outcome of this case.

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