Circuit Court for Anne Arundel County
Case No. C-02-CR-19-000092

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1449

September Term, 2020

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JOSEPH PATRICK SOULE

v.

STATE OF MARYLAND

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Fader, C.J.,
Graeff,
Shaw Geter,

JJ.

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Opinion by Shaw Geter, J.

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Filed: December 17, 2021

Appellant, Joseph Soule, was indicted in the Circuit Court for Anne Arundel County for first degree murder and two counts of carrying a weapon with the intent to injure arising from an altercation at Jessup Correctional Institution that ended in the death of his cellmate, David Stephenson. A jury convicted him of second-degree murder and one count of carrying a weapon with the intent to injure. Appellant was sentenced to thirty-five years imprisonment for the second-degree murder, and to a concurrent term of three years for the weapons offense. On appeal, he presents three questions for our review:

1. Did the trial court commit reversible error in preventing the Defense from admitting docket entries as evidence of [the victim's] convictions?

2. Did the trial court commit reversible error in instructing the jury on concealment?

3. Was the evidence insufficient to support a conviction for carrying a dangerous weapon with the intent to injure?

For reasons discussed below, we affirm.

## BACKGROUND

On November 2, 2018, at Jessup Correctional Institution, during rounds at approximately 3:20 a.m., a correctional officer noticed that a mattress was blocking the window to the cell occupied by David Stephenson and Joseph Soule. The officer called out to the cellmates to remove the obstruction, however, there was no response. When the officers manually removed items blocking the window, Stephenson was observed lying face down, on the floor, with his hands tied behind his back. Paramedics responded and found him with no pulse, and they determined that he was deceased. His body was later transported to the Medical Examiner's Office for an autopsy.

**TRIAL**

At the November 4, 2019 trial, the State called nine witnesses, during its case in chief, all essentially testifying about their observations surrounding the November 2, 2018 incident that resulted in Stephenson's death. Supervising correctional officer, Sergeant Jude Anyaibe testified that he was working that night, and no one reported any unusual noises coming from the Stephenson and Soule cell. He stated that correctional officers made rounds six times between midnight and 3:00 a.m. and nothing was reported "out of the ordinary." At 3:20 a.m., the Sergeant stated that one of his supervisory officers reported that appellant's and Stephenson's "cell door was covered with a mattress and a bunch of other stuff" and as a result, he could not perform his check on the inmates. When the Sergeant went to investigate, he recalled not being able to see inside the cell. The officers then removed items blocking the window, and the Sergeant observed Stephenson face down, on the floor, with his hands tied behind his back.

Corporal Christopher Greenwood testified that he was assigned to the compound[1] that day, and he was called to appellant's cell to walk him to medical. Once there, he did not attempt to engage appellant in any conversation. However, during the walk, the Corporal testified that appellant made several incriminating statements, including that he killed his cellmate in self-defense. Lieutenant Kevin Hight testified that he responded after the incident and interviewed appellant. He states that this is "standard procedure" and when "there is an incident inside a cell," they take the inmate "to the medical facility and

[1] Corporal Greenwood describes the compound as "the whole outside area of the jail."

a supervisor comes in contact with the inmate to try to assess the situation …and give the inmate an opportunity to make a statement." Appellant was not advised of his Miranda rights. The Lieutenant stated that he was very "cordial" with appellant when asking him questions, "just having a conversation" with him about the incident, and the appellant's "demeanor was very calm." He also stated that although he was being held for medical treatment and not free to leave, appellant's statements were voluntary. Appellant made a written account of the incident at the conclusion of the interview.

Dr. Russell Alexander, an assistant medical examiner, performed the autopsy and testified that he observed signs of blunt force trauma, asphyxia, and restraint and that Stephenson had ligature strangulation marks. There was a "sheet and cord 'that's been kind of twisted and wrapped around his neck' [and] …'another sheet' and two cords 'that's been kind of twisted around and tied around [his] wrists.'" In addition, there was a "large, complex cutting type wound" on his head, neck, and jawline measuring nine inches long and one-and-a-half inches wide. Dr. Alexander testified that the margins of the wound were "very jagged" with "multiple kinds of cuts trailing off from the edge of the wound." He counted "10 distinct areas" "where a sharp[-]edged weapon was pulled across the body" and the top portion of the victim's right ear had been cut away. The left eye was surrounded by a "big bruise" with "a lot of bleeding or hemorrhage." The area around the right eye was also bruised, and the right eye "almost burst" because of trauma or a blunt force impact that tore the eye. Dr. Alexander determined the cause of death was homicide. The

toxicology report indicated that Stephenson had N-Ethylpentylone[2] in his system at the time of death.

The Defense did not dispute that appellant caused the death of his cellmate. Rather, the Defense argued that the killing was justified because appellant acted in self-defense. Appellant testified that at approximately 10:00pm, Stephenson poured out drugs from a highlighter that appellant thought was Molly[3] and sniffed them. He offered drugs to appellant, who also sniffed some. Afterwards, they watched television together and at approximately 2:00 am, his cellmate ingested more drugs. After the second round, he began making sexual advances towards appellant, suggesting that appellant might like having sex with men, to which appellant responded, "no, he liked women." Stephenson then offered to pay appellant $500 for sex and he refused. When appellant went to use the toilet, and, as he unfastened his pants, Stephenson shoved him from behind, slamming his face into the wall. Appellant testified that, as a result, he was dizzy, but he felt Stephenson

[2] The toxicology report revealed that the victim had N-Ethylpentylone in his blood and urine, not Molly. This drug has an abusive psychoactive effect on the central nervous system and can change a person's perception, mood, and behavior. "N-Ethylpentylone is a designer drug of the phenethylamine class and is abused for its psychoactive effects." *N-Ethylpentylone*, U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Division (Dec. 2019), https://www.deadiversion.usdoj.gov/drug_chem_info/n-ethylpentylone.pdf.

[3] "Methylenedioxy-methamphetamine (MDMA)," which is most commonly known as ecstasy or molly, "is a synthetic drug that [also] alters mood and perception." *MDMA (Ecstasy/ Molly) DrugFacts*, National Institute on Drug Abuse (Jun. 2020), https://www.drugabuse.gov/publications/drugfacts/mdma-ecstasymolly.

pull his pants down, dragging his nails along his legs. Appellant was then pinned against the wall, and he felt Stephenson attempting to sexually assault him.

According to appellant, he fought off Stephenson and pulled his pants back up. Stephenson then grabbed a razor, slashed at him and told him that if he didn't cooperate, "I am going to take it." Appellant then grabbed Stephenson's wrist and punched him in the face, causing him to drop the razor blade. The two wrestled and appellant yelled for officers, but no one responded. Appellant gained control of the razor and managed to cut his cellmate "really fast." Appellant restrained him by tying cords and sheets around his wrists and neck. "I grabbed whatever I could [,] and I wrapped it around his neck to try to restrain him." He "held on to" the sheet with the cord tied around Stephenson's neck "until he stopped fighting me." Appellant "thought he went to sleep" and then "yanked the cable cord off the TV and tied his hands behind his back." When appellant stepped back to see if the victim would try to get up, an officer came to the door and asked him where his cellmate was. Appellant stepped to the side and said, "he is right there." The officer ran from the cell.

Appellant testified that the officer's reaction scared him because he did not ask him what happened. He feared the officers would return to spray him with mace and beat him up, so he put a mattress and other objects in front of the door. When the officers returned, they moved the mattress, handcuffed appellant and walked him to the medical office. One of the officers asked appellant what happened and he explained that the victim "tried to rape me[;] he attacked … and I did what I had to do to defend myself, to fight for my life."

Following the close of all evidence, the court instructed the jury and included an instruction on concealment. Appellant was convicted of second-degree murder and one count of carrying a weapon with the intent to injure. He was sentenced to thirty-five years imprisonment for second-degree murder, and to a concurrent term of three years for the weapons offense. He timely appealed.

## STANDARD OF REVIEW

Evidence is relevant when it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Md. R. Evid. 5-401. Whether evidence is relevant is reviewed by an appellate court de novo. *State v. Simms*, 420 Md. 705, 724 (2011). The weighing of the probative value of evidence against unfair prejudice is reviewed for an abuse of discretion. *Id*. at 725.

When reviewing the sufficiency of the evidence, we examine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Titus v. State*, 423 Md. 548, 557 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

## DISCUSSION

### I. The trial court did not err in refusing to admit the docket entry of Mr. Stephenson's conviction.

Appellant contends the trial court committed error in refusing to admit the docket entry confirming Stephenson's conviction for sexual abuse of a minor. Conversely, the

State argues that appellant's claim regarding the docket entry is unpreserved and that even if preserved, the circuit court acted within its discretion. The State further contends that if the court erred, it was harmless.

It is well settled that on appeal, review is limited to those issues that were raised and objected to at trial. "Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings." *Robinson (Cecil) v. State*, 410 Md. 91, 103 (2009) (quoting *Clayman v. Prince George's Cty.*, 266 Md. 409, 416 (1972)).

In the case at bar, prior to jury selection, the court heard argument on motions in limine filed by both sides. Appellant sought to preclude the State from mentioning he had been previously convicted of second-degree murder, and the State agreed not to do so. The State sought to preclude appellant from mentioning Stephenson's prior conviction for sexual child abuse. Appellant's counsel stated:

> [E]vidence of the [d]efendant's knowledge of the victim's character as it related to violence and dangerousness… is relevant for two specific reasons …. One is that [the] violence and dangerous character of the victim is relevant in determining who was the aggressor. I would proffer to the court [that] the [d]efendant was aware of … [the victim's] violent history, was aware that he had previously been convicted of sexual crimes related to minors, [and] that … [he] had been convicted of assaulting sexually in the past and … was serving a sentence [for those assaults]. Secondly[,]… under the cases that …[the defense] cited, character evidence may be introduced to prove the state of mind, not only … the [d]efendant's state of mind as to why he used deadly force, but also as it relate[d] to the specific intent of the victim in this particular case to assault the [d]efendant and sexually [assault him] because he had done that type of behavior in the past with regards to minors.

Appellant did not seek a ruling from the court on the admissibility of the docket entry, rather he sought to testify that he was aware of Stephenson's conviction. In response, the court ruled that what appellant knew about the prior conviction was relevant, but that appellant's testimony would be limited to stating that he knew the general nature of the crime Stephenson was incarcerated for.

At trial, following appellant's testimony, his counsel sought the admission of the docket entry containing Stephenson's conviction, stating, "the only other thing that I don't know whether the [c]ourt would allow me to introduce the victim's conviction, [y]our honor, out of Frederick County and I have the docket entry reflecting that conviction." The court declined, stating, "No. The only relevance is …[what] we discussed …at the earlier motions hearing[, which] is that it goes to the state of mind of your client. And so[,] it didn't turn on whether it was an actual conviction or not. So, that is denied." Defense made no other statements.

The State argues appellant did not mention that he would seek the admission of the docket entry during the motion in limine hearing and, at trial, he did not object to the court's ruling denying admission, nor did he proffer why the entries were admissible. As a result, appellant's claim was not properly preserved. Appellant argues that he did not need to raise the issue of the admission of the docket entry at the motions hearing in order to preserve the issue for appellate review. He also contends that he did make arguments in support of the evidence's admission, but, even if he did not, such arguments were not necessary. He asserts that his "request and the court's denial satisfied the letter and purpose" of Md. Rule 4-323(c) and therefore the issue was preserved.

A motion in limine seeks to have the court determine whether "evidence [will] not be referred to or offered at trial." *Black's Law Dictionary* (11th ed. 2019). The motion serves two purposes by "prevent[ing] the jury from hearing certain questions and statements that are allegedly prejudicial to the movant" and "giv[ing] the trial judge notice of the movant's position so as to avoid the introduction of damaging evidence which may irretrievably infect the fairness of the trial." *Reed v. State*, 353 Md. 628, 634 (1999). "[A] ruling on a motion in limine does not always preserve evidentiary error for appellate purposes." *Klauenburg v. State*, 355 Md. 528, 539 (1999).

In the present case, we hold that appellate review is not precluded because appellant failed to indicate that he intended to introduce the docket entry at the motions hearing. We note that there may be circumstances where the need to admit certain evidence becomes more important during the course of a trial then previously anticipated and a party seeking its admission should not be precluded from doing so. Limiting appellate review to only those issues presented during a motions hearing would be unfair and highly prejudicial. Thus, we hold appellant's failure to request the admission of the docket entry at the motions hearing does not preclude our review.

We next focus on the trial proceeding where appellant did not lodge an objection to the court's ruling on his request for the document's admission nor did appellant proffer to the court why the docket entry was, otherwise, relevant.

Maryland Rule 4-323(c), entitled, "Objections to Other Rulings or Orders" states:

> For purposes of review ... on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the

> court. The grounds for the objection need not be stated unless these rules expressly provide otherwise[,] or the court so directs. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection.

Appellant argues that under Rule 4-323(c), an objection is not required and his simple request for the docket entry's admission at trial preserved the issue. We agree and hold that the issue of the admissibility of the docket entry was properly preserved. It was known to the court and both sides that the attempt to admit the docket entries was to corroborate appellant's claims about the victim, as had been argued at the motions hearing.

In determining whether a prior conviction is admissible, the trial court examines whether the conviction is "legally relevant" to the issues in the case, and, if relevant, the court weighs "the probative value" of the evidence against "the danger of unfair prejudice." *Simms*, 420 Md. at 725. Generally, "trial judges have wide discretion" in weighing the relevance of and admissibility of evidence. *Id*. at 724.

Here, at the motions hearing, the judge ruled, "look[ing] at the strict application of the case law in self-defense cases, part of [the relevance of prior convictions would be] knowledge." The second is that "when look[ing] at serious bodily injury or imminent danger[] that suggests a forcible component," it is not just that an individual find the "conduct abhorrent or antithetical to what [they] would want to engage in, but rather" feel threatened by it. The judge reiterated that "the *mens rea* of the defendant … always becomes very relevant for the factfinder as an affirmative defense." The judge then limited appellant's testimony to "indicating that he knew the general nature of the crimes for which he was serving time." His ruling at trial was in accordance with his prior decision at the

motions hearing stating, "the only relevance [that he] saw… is that [the docket entry] goes to the state of mind of" the appellant. This ruling clearly reflects a determination of relevance and a weighing of the value of the evidence against the danger of unfair prejudice. We hold it was not an error or abuse of discretion to refuse to admit the docket entries.

Assuming *arguendo*, the court erred, appellant argues the court's failure to admit the docket entry was not harmless because the docket entry "corroborated" appellant's version of events and may have convinced the jurors that Stephenson attempted to sexually assault him. The State argues the docket entry provided no new information.

On appeal, an error is determined to be harmless when "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Newton v. State*, 455 Md. 341, 353 (2017). The court "must [be] satisfied that there is no reasonable possibility that [the] evidence complained of, whether erroneously admitted or excluded, may have contributed to [the] rendition of [a] guilty verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). If the error is harmless, the judgment will stand. *Conyers v. State*, 354 Md. 132, 160 (1999).

In examining the record in the case at bar, we observe that both sides discussed the victim's sexual abuse conviction in opening statements, closing statements, and appellant testified about his knowledge of the conviction during trial. There was, therefore, no dispute that the conviction existed and the docket entry could not have supplied any further details. We, therefore, conclude that there was no reasonable probability that admission of the docket entry would have changed the verdict. The court's error, if any, was harmless.

## II. The trial court did not commit reversible error in instructing the jury on concealment.

Appellant argues the trial judge committed reversible error by giving the jury an instruction on concealment when the appellant could "not [have]… conceal[ed] himself because he was in a locked cell." The State argues the judge acted properly and the instruction was generated by the evidence.

Following the close of evidence, the court instructed the jury and included in its instructions the following:

> Concealment immediately after the commission of a crime is not enough by itself to establish guilt but it is a fact and may be considered by you as evidence of guilt. Concealment under these circumstances may be motivated by a variety of factors[,] some of which are fully consistent with innocence. You must first decide whether there is evidence of concealment. If you decide there is evidence of concealment, you then must decide whether this concealment shows a consciousness of guilt.

*See* Maryland Pattern Jury Instruction (Criminal) ("MPJI-Cr") 3:24 (2d ed. 2018).[4]

"Ordinarily, this Court reviews a trial court's decision on giving a jury instruction for abuse of discretion." *Hall v. State*, 437 Md. 534, 539 (2014). But even in discretionary matters, "a trial court must exercise its discretion in accordance with correct legal standards." *Schisler v. State*, 394 Md. 519, 535 (2006). "When a trial court determines a jury instruction is proper, the determination is a legal one, which this Court reviews without deference." *Williams v. State*, 457 Md. 551, 563 (2018).

A judge is required to give "a requested jury instruction when the instruction is a correct statement of law, the instruction is applicable to the facts of the case and the content

[4] MPJI-Cr 3:24 is titled "Flight or Concealment of Defendant." In the instruction, the terms "flight" and "concealment" are used interchangeably.

of the instructions was not fairly covered by other instructions given." *Cost v. State*, 417 Md. 360, 368-69 (2010) (quoting *Dickey v. State*, 404 Md. 187, 197-98 (2008)).

Generally, a flight or concealment jury instruction is proper when "the evidence is sufficient to furnish reasonable support to meet all the necessary inferences" in the *Thompson/Myers* four-prong test. *United States v. Myers*, 550 F.2d 1036, 1050 (5th Cir. 1977). In *Thompson*, the Court of Appeals considered a matter where the defendant was charged with several counts related to a shooting and the trial court gave a flight instruction. *Thompson v. State*, 393 Md. 291, 294-95 (2006). The Court held that the "trial court's giving of the pattern jury instruction on flight was not per se improper, but under the circumstances, [the] trial court abused its discretion." *Id*. at 291. The Court explained that "consciousness of guilt evidence, like evidence of flight [or concealment], only warrants a jury instruction when it meets a four-prong test borrowed from the Fifth Circuit case *United States v. Myers*, 550 F.2d 1036 (5th Cir. 1977)." *Id*. at 311. "The test articulates the four requisite inferences relating evidence of flight or [concealment] to guilt of the offense charged." *Id*. at 312. Under this test, a jury instruction is properly given where the following inferences can be drawn:

> (1) the defendant's behavior suggests flight [or concealment];
> (2) the flight [or concealment] suggests consciousness of guilt;
> (3) the consciousness of guilt is related to consciousness of guilt concerning the crime charged; and
> (4) the consciousness of guilt concerning the crime charged suggests actual guilt of the crime charged.

*Id*. The Court held "a …[concealment] instruction is improper unless the evidence is sufficient to furnish reasonable support for all four necessary inferences." *Id*. (citing

*Myers*, 550 F.2d at 1049). Both sides agree that the Thompson/Myers test is applicable.

Appellant argues the concealment instruction was not generated because there was no evidence that he was trying to hide what happened because he was "in a locked cell, [that] correctional officers were going to get in eventually." He also contends that because there was "no evidence that he cleaned anything up after placing the mattress" and "did not conceal or destroy evidence," no inference can be made suggesting a consciousness of guilt.

In our view, appellant's testimony provided inferences for all four prongs of the Thompson/Myers test. Appellant testified that he intentionally placed the objects in the window and this action suggested a consciousness of guilt which was related to the crime charged and suggested actual guilt. Simply because appellant testified that he was trying to avoid getting maced did not require the court to negate an inference of consciousness of guilt. "To be characterized as consciousness of guilt evidence, it is not necessary that the evidence conclusively establish a defendant's guilt." *Jones v. State*, 213 Md. App. 483, 509 (2013). Rather, this Court looks to "whether the evidence *could* support an inference that the defendant's conduct indicates consciousness of guilt." *Id*. (emphasis added). Appellant's admitted conduct created a reasonable inference that he was concealing evidence. As argued in the State's brief, "[a]n equally reasonable inference is that Soule put the mattress in front of the window to conceal his attack on Stephenson from the eyes of the correctional officers, or to conceal the aftermath long enough for Soule to stage the scene to match his version of events." We conclude that the judge did not abuse his discretion as there was sufficient evidence of concealment to suggest a consciousness of

guilt.

### III. The evidence was sufficient to support a conviction for carrying a dangerous weapon with the intent to injure.

Appellant contends that his conviction for carrying a weapon with the intent to injure must be reversed because there was no solid factual foundation that he carried the extension cord with the intent or purpose to cause injury. The State argues that appellant's claim is unpreserved because he did not make that argument in support of his motion for judgment of acquittal, as required by the rules. Moreover, the State contends that even if appellant's claim was preserved, there was sufficient evidence to support the conviction.

Maryland Rule 4-324(a) governs motions for judgments of acquittal and states:

> A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall *state with particularity all reasons why the motion should be granted*. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.

(emphasis added). The rule is "mandatory and review of a claim of insufficiency" is available only for the reasons given by appellant in his motion for judgment of acquittal. *Id*.; *see also Starr v. State*, 405 Md. 293, 301-03 (2008).

At trial, following the close of the State's case in chief, appellant's counsel moved for a judgment of acquittal and argued that "although there certainly is evidence that there was an extension cord[,] … [there is] no indication that he was wearing and carrying it with the intent to injure. There is no evidence to support that." The judge denied the motion and appellant proceeded to put on his case.

> A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the defendant withdraws the motion.

*See* Rule 4-324(c).

At the close of all evidence, appellant's counsel again moved for a judgment of acquittal and the judge asked counsel if he wanted to "amplify his motion?" Appellant's counsel stated, "I do, Your honor." "I would make a motion at this point in time for judg[]ment of acquittal as to the remaining counts." In our view, because the judge asked appellant's counsel if he wanted to "amplify" his motion, the previous arguments were preserved.

Appellant argues that the evidence was insufficient to support his conviction for carrying a weapon with the intent to injure because there was no evidence that he carried the cord with the intent to injure. The State argues that the jury could have inferred from the evidence that appellant wrapped the cord and sheet together prior to the attack.

In *Chilcoat v. State*, the defendant was convicted of first-degree assault and carrying a dangerous weapon openly with the intent to injure. 155 Md. App. 394 (2004). Defendant appealed, and challenged whether the evidence was sufficient enough to sustain his conviction for carrying a dangerous weapon openly with intent to injure. *Id*. at 397. We held that the "defendant's action of walking several steps toward the victim while holding beer stein did not constitute 'carrying' that weapon," reasoning that the "defendant carried the stein only a short distance and the defendant had no purpose other than to injure the victim." *Id*. at 407-13. We explained the carrying requirement, stating that "more than

[the] mere use of the weapon" is necessary, as the "State must prove that the defendant had possession of the weapon outside the possession necessary" to commit the crime. *Id.*

In the present case, the medical examiner testified that the victim had two separate cord and sheet combinations, one tied around his neck and one around his wrists. The cord and sheet combination wrapped around his neck left ligature strangulation marks and the victim was restrained separately with the same sheet and cord combination binding his hands behind his back. While appellant testified that he "grabbed whatever he could … to try [and] restrain him" and that "[he] yanked the cable cord off the TV [to] tie [the victim's] hands behind his back," the jury could have reasonably inferred that the sheet/ cord combination had been prepared in advance since they were "kind of twisted and wrapped" together and was carried in more than an incidental manner, especially in light of appellant's knowledge of Stephenson's past behavior. As such, any reasonable jury could have found the evidence sufficient to support his conviction.

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.**