Circuit Court for Worcester County
Case No. C-23-CR-21-000331

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1629

September Term, 2022

TOMMY LEE BEAUCHAMP

v.

STATE OF MARYLAND

Berger,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: October 17, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In July of 2021, appellant Tommy Lee Beauchamp's ("Beauchamp") 15-month-old child, R.,[1] was treated for a suspected opiate overdose. Following a trial, a jury in the Circuit Court for Worcester County found Beauchamp guilty of reckless endangerment and neglect of a minor. The counts merged at sentencing, and the court sentenced Beauchamp to a term of 5 years' incarceration. Beauchamp noted a timely appeal. For the following reasons, we affirm.

ISSUES PRESENTED FOR REVIEW

Beauchamp presents the following issues for our review:[2]

I. Whether the circuit court committed plain error by making a comment in the presence of the jury which arguably bolstered the credibility of a witness.

II. Whether the circuit court abused its discretion by excluding evidence about children uninvolved with the offenses charged.

III. Whether the circuit court erred denying Beauchamp's motion for acquittal and in its jury instructions.

[1] To protect the child's identity, we refer to the child as "R."

[2] Rephrased from:

1. Did the trial court's lavish praise of the lead detective in the jury's presence deprive Appellant of a fair trial?
2. Did the trial court err or abuse its discretion in precluding the defense from inquiring into child protective services and resolutions related to Amy Daniels' children, other than [R.]?
3. Did the trial court err in declining to apply the charging document as drafted in ruling upon Appellant's motion for judgment of acquittal and in instructing the jury, and instead relying upon the definition of child neglect provided by the Maryland Pattern Jury Instructions?

FACTUAL AND PROCEDURAL BACKGROUND

In July of 2021, paramedics were dispatched to an apartment rented by Amy Daniels ("Daniels"), where she resided with Beauchamp and their child, R. Upon arrival, first responders discovered R. on the verge of complete respiratory failure and began providing treatment. After noticing R.'s highly dilated pupils, paramedics administered Narcan,[3] which stabilized R. At trial, Daniels testified that R. had placed an object contaminated with heroin residue into his mouth, causing the overdose. Daniels further testified that Beauchamp, a regular drug user, had brought the heroin into the home that caused R. to overdose. Additional facts will be incorporated as they become relevant to the issues.

DISCUSSION

I. WE DECLINE TO ENGAGE IN PLAIN ERROR REVIEW OF THE CIRCUIT COURT'S COMMENTS ABOUT A WITNESS.

For the first time on appeal, Beauchamp asserts that the trial judge's comments about one of the State's witnesses, Detective Vicki Martin ("Det. Martin"), deprived him of his right to a fair trial. During cross-examination, the State objected to a series of Beauchamp's questions which attempted to elicit information from Det. Martin about the results of R.'s toxicology report. In sustaining the objection, the circuit court stated:

> I understand Detective Martin is an excellent conduit to disseminate that information to the jury. But she is not a medical expert, as much as I admire the job she does and her expertise, but she is not qualified to offer opinions. And I think that asking her to simply regurgitate what a medical professional told her or what information she read in an admitted document is pushing it too far.

[3] Narcan is a drug used to reverse the effects of opiate use or overdose; it has no negative side effects if administered to a person not under the influence of opiates.

Beauchamp noted no objection to either the court's ruling or comment.

A. Standard of Review

"Ordinarily, an 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[.]" Md. Rule 8-131(a). Limiting appellate review to preserved issues "is a matter of basic fairness to the trial court and to opposing counsel, as well as being fundamental to the proper administration of justice." *In re Kaleb K.*, 390 Md. 502, 513 (2006) (quoting *Medley v. State*, 52 Md. App. 225, 231 (1982)). "Without a contemporaneous objection or expression of disagreement, the trial court is unable to correct, and the opposing party is unable to respond to, any alleged error in the action of the court." *Lopez-Villa v. State*, 478 Md. 1, 13 (2022).

As an infrequent exception to Rule 8-131(a)'s preservation requirement, the plain error doctrine grants appellate courts discretion to review unpreserved "errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). "[A]ppellate review under the plain error doctrine '1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *White v. State*, 223 Md. App. 353, 403 n.38 (2015) (quoting *Hammersla v. State*, 184 Md. App. 295, 306 (2009)). In order to apply plain error discretion, four conditions must be satisfied:

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have

> affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Newton, 455 Md. at 364 (internal quotation marks omitted) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

B. Plain Error Review is Applied Only in the Case of a Compelling, Extraordinary, Exceptional or Fundamental Error.

Beauchamp urges this Court to exercise plain error review, alleging that the circuit court's comments regarding Det. Martin and her testimony "violated the trial court's obligation to conduct itself in a neutral and impartial manner," therefore depriving Beauchamp of his right to a fair trial. Beauchamp opines that the trial judge's comments enabled the jury to "easily have concluded that the judge . . . knew Ms. Martin well, so that his opinion of her was worthy of enhanced weight." The State asserts that plain error review is unwarranted, as the circuit court committed no error at all, let alone the type of extraordinary error which "vitally affects a defendant's right to a fair and impartial trial." *Diggs v. State*, 409 Md. 260, 286 (2009) (quoting *State v. Daughton*, 321 Md. 206, 211 (1990)).

In seeking review, Beauchamp alleges that two sentences within the trial judge's ruling provide grounds for reversible error. The first is the court's statement that "Detective Martin is an excellent conduit to disseminate [R.'s toxicology reports] to the jury." The second is: "[A]s much as I admire the job that she does and her expertise . . . she is not qualified to offer opinions." Contextually, the court's statement came after a series of

defense counsel's questions seeking to elicit duplicative information from previously admitted medical records, to which the State objected.

In this context, we interpret that the trial judge's first comment, stating that Det. Martin was "an excellent conduit to disseminate" the information, not as a judgment of Det. Martin's credibility, but as explaining the basis of the court's ruling. The court denied the State's objection and clarified that it was doing so not because Det. Martin was categorically an improper person to introduce the information, but because Beauchamp was asking her to "regurgitate what a medical professional told her or what information she read in an admitted document." In evaluating the trial judge's first comment we can discern no error sufficient to "cause a reasonable person to question the impartiality of the judge," and thereby deprive Beauchamp of his fundamental right to a fair trial. *Archer v. State*, 383 Md. 329, 357 (2004) (quoting *Jackson v. State*, 364 Md. 192, 207 (2001)).

Similarly, the trial judge's second comment about Det. Martin, indicating that he "admire[d] the job that she does and her expertise," is likewise insufficient to prompt us to engage in plain error review. Although Beauchamp asserts that "[t]he jury could easily have concluded that the judge, as a former elected State's Attorney, knew Ms. Martin well[,]" this assertion is tenuous at best. We agree with the State that not only has Beauchamp asserted no evidence that would support the claim that the trial judge and Det. Martin were acquainted, and even supposing that they were, the existence of an acquaintance between a judge and a witness alone would be insufficient to overcome the "strong presumption in Maryland . . . that judges are impartial participants in the legal

process[.]" *Jefferson-El v. State*, 330 Md. 99, 107 (1993) (citations omitted).

Beauchamp compares the trial judge's comments in this case with the plain errors committed by judges in *Diggs v. State*, 409 Md. 260 (2009), *Marshall v. State*, 291 Md. 205 (1981), *Archer v. State*, 383 Md. 329 (1993), as well as those committed in other cases. In *Diggs*, the Supreme Court of Maryland reversed a conviction based on plain error where a trial judge's "repeated and egregious behavior" amounted to acting as a "co-prosecutor," and created "an atmosphere so fundamentally flawed as to prevent [the defendants] from obtaining fair and impartial trials." 409 Md. at 293–94. In *Marshall*, the Supreme Court found that plain error review was warranted when a trial judge, without any indication of a witness' dishonesty, threatened the witness with a perjury charge if he testified inconsistently with a prior statement. 291 Md. at 209–10. In *Archer*, the trial judge "coerce[d] [a witness] to testify with threats," and "likely caused [the witness] to change his testimony to reflect the judge's opinion." 383 Md. at 352–53.

Assuming without deciding that the trial judge's comments about Det. Martin rose to the level of error, any potential impact on this case was not equivalent to the egregious and patently prejudicial errors in *Diggs*, *Marshall*, and *Archer*. Unlike those cases, here, the trial judge's comments were brief, isolated, and did not appear to alter the nature of the information that reached the record.[4] We can discern no threat of an error so "compelling,

[4] Beauchamp's argument is further weakened by the fact that the trial judge twice instructed the jury on the necessity of evaluating the weight of evidence solely based upon their own perception. At the outset of trial, the court stated: "You must decide this case based upon the evidence produced at trial. Nothing the Court may say or do during the course of the trial is intended to indicate or should be taken by you as indicating what your verdict should

extraordinary, exceptional or fundamental" that if uncorrected, would abrogate Beauchamp's right to a fair trial. *Newton*, 455 Md. at 364. Hence, even were we to conclude that there was an error that was clear and obvious, we are unable to conclude that the court's words were demonstrated to have affected the outcome of the trial. Accordingly, we decline to exercise plain error review.[5]

II. THE CIRCUIT COURT DID NOT ERR IN PRECLUDING TESTIMONY ABOUT DSS ACTIONS PERTAINING TO CHILDREN UNRELATED TO THE CASE.

At trial, defense counsel questioned Daniels about R.'s two siblings, who despite also being the children of Daniels and Beauchamp, did not reside in the apartment with the family. The State objected, arguing that the whereabouts of the two children, who had previously been removed from Daniels' care pursuant to factually unrelated Department of Social Services ("DSS") assessments, was irrelevant to the case at bar. At a bench conference, defense counsel argued that the State had "opened up the door that there are these other two [children]," and the jury "would have a legitimate question as to where the

be." Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 1:00. After the close of evidence, the court instructed the jury pursuant to MPJI-Cr 3:00: "During the trial, I may have commented on the evidence or asked a question of a witness. You should not draw any conclusion about my views of the case or of any witness from my comments or my questions." "[O]ur legal system necessarily proceeds upon the assumption that jurors will follow the trial judge's instructions." *State v. Moulden*, 292 Md. 666, 678 (1982).

[5] Although we have provided a basis for our decision not to exercise plain error review, we note that we need not have done so. *See Morris v. State*, 153 Md. App. 480, 506–07 (2003) (stating that in determining whether to exercise plain error review, the five words "we decline to do so[,]" are "all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation." (emphasis and footnote omitted)).

other two are." In sustaining the State's objection, the court stated, "[o]pening up a door doesn't mean that you still get to admit irrelevant information . . . it's going to be confusing to the jury." The court inquired of defense counsel, "[h]ow is that relevant as to whether or not Mr. Beauchamp committed these two crimes?" Beauchamp's trial counsel responded, "[c]ollateral at best, Your Honor," and did not assert that the evidence was relevant for any specific purpose. Beauchamp did not make a formal proffer. The court sustained the State's objection.

A. Standard of Review

"We review a trial court's determination as to the relevance of evidence *de novo*, and its determination whether to admit or exclude relevant evidence for an abuse of discretion." *Sykes v. State*, 253 Md. App. 78, 90 (2021). In addressing properly preserved contentions about the admissibility of evidence, we recognize that a trial court has broad discretion under Md. Rule 5-611 to control the scope of cross-examination. *See Myer v. State*, 403 Md. 466, 476 (2006). Specifically, trial judges are empowered to limit the scope of cross examination to avoid introducing collateral issues that might confuse a jury. *Wagner v. State*, 213 Md. App. 419, 468 (2013). Assuming an argument is preserved, we will reverse only where the court has abused its discretion. *Id.* "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018).

However, as explained above,[6] we do not normally review issues or consider arguments unless they were raised in or decided by the trial court. Md. Rule 8-131(a). In order to preserve an argument that evidence is admissible, a party must generally object on the record, and the record must reflect that the specific theory of admissibility was either explicitly raised before the trial court or was readily apparent to the court from the context of the objection. *See Robinson v. State*, 66 Md. App. 246, 253–54 (1986); *Braxton v. State*, 57 Md. App. 539, 549 (1984) ("[A]ppellant's present theory of admissibility was neither tried nor decided by the trial judge and we ought not consider it."). Although appellate courts, in limited circumstances, have the discretion to consider unpreserved arguments on appeal, *State v. Bell*, 334 Md. 178, 188 (1994), we generally decline to hear such arguments unless doing so would clearly promote the orderly administration of justice and not unfairly prejudice either party. *Jones v. State*, 379 Md. 704, 714–15 (2004).

B. An Argument Not Raised at Trial is Generally Unpreserved.

On appeal, Beauchamp argues that the circuit court committed reversible error by precluding him from questioning Daniels about the other children, who had been removed from her care pursuant to DSS actions that did not involve R. Now, for the first time, Beauchamp asserts that "Daniels' treatment of [R.]'s siblings was potentially relevant to her treatment of [R.]," and "Daniels was very much a possible alternative suspect." Therefore, Beauchamp argues the court's ruling constituted prejudicial error. In support, Beauchamp cites several cases arguing that at least in the Child in Need of Assistance

[6] *See* Section I.A *supra*.

("CINA")[7] context, "neglect of one of multiple siblings is probative of [a] parent's potential neglect of a second sibling." However, this basis for admission was not that which was put forth to the trial court. The only admissibility argument raised at trial was that Daniels' testimony would be useful for answering the jury's "legitimate question as to where the other two [children] are."

The State maintains that Beauchamp is precluded from now arguing that the excluded testimony was relevant for presenting Daniels as an alternative suspect in the crime or for otherwise impeaching her, because at trial, Beauchamp characterized the testimony as relevant solely for the purpose of explaining to the jury the location of the other children. Separately, the State argues that Beauchamp affirmatively waived his right to appeal the court's inadmissibility ruling when defense counsel admitted that the relevance of testimony concerning the DSS actions was "[c]ollateral at best" to the issue of whether Beauchamp was guilty of the crimes charged. The State further contends that even if Beauchamp's claim was preserved, the circuit court did not err, as the proposed testimony was irrelevant or substantially outweighed by the danger of unfair prejudice. We agree with the State that by arguing a specific theory of admissibility at trial, Beauchamp failed to preserve his current argument asserting a wholly new basis for admissibility.

[7] A CINA is:

> [A] child who requires court intervention because: (1) the child have been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

Md. Code, Courts & Judicial Proceedings Article, § 3-801(f).

Hence, we need not decide the question of whether Beauchamp later affirmatively waived his claim, nor reach the merits of the court's ruling.[8]

In the absence of plain error, we have consistently "declined to rule upon issues and theories of admissibility that have not been presented in trial court." *Robinson*, 66 Md. App. at 254; *see* Md. Rule 8-131(a). "One of the principal purposes of this rule is to require counsel to bring the positions of their clients to the attention of the lower court at trial." *Robinson*, 66 Md. App. at 254. Moreover, "a trial judge's refusal to allow a line of questioning on cross-examination amounts to exclusion of evidence; preservation for appeal of an objection to the exclusion generally requires a formal proffer of the contents and relevancy of the excluded evidence." *Grandison v. State*, 341 Md. 175, 207 (1995); *see also Merzbacher v. State*, 346 Md. 391, 416 (1997) ("Ordinarily, a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for review the propriety of the trial court's decision to exclude the subject evidence.")[9]

A proffer of "contents and relevancy" allows the trial court the opportunity to rule on the admissibility of proposed testimony, as well as creates a record enabling a reviewing court to evaluate the trial court's exercise of discretion. *See Merzbacher*, 346 Md. at 416.

[8] Although we do not review the circuit court's decision on the merits, we note that "with respect to evidentiary rulings on admissibility generally and rulings with respect to relevance specifically, the trial judge is vested with wide, wide discretion." *Schmitt v. State*, 140 Md. App. 1, 17 (2001).

[9] A formal proffer, although generally preferred, is not required for preservation where the court hears the testimony and "the relevance [is] apparent from the context." *Devincentz v. State*, 460 Md. 518, 539 (2018).

(1997). It also serves to alert the opposing party to the basis for the challenge and allows them an adequate opportunity to respond. *See Elliot v. State*, 417 Md. 413, 440–41 (2010); *Giordenello v. United States*, 357 U.S. 480, 488 (1958). These purposes are clearly frustrated when a party articulates a discrete theory of relevance at trial, and subsequently asserts a different theory, one unconsidered by the trial court, on appeal. *See Sifrit v. State*, 383 Md. 116, 136 (2004) (refusing to "require trial courts to imagine all reasonable offshoots of the argument actually presented" before making a ruling on admissibility).

When a party affirmatively raises a single specific theory of admissibility at trial, that litigant has not preserved the opportunity to seek appellate review based on alternate theories of admissibility left unstated and untested before the trial court. *Compare Robinson*, 66 Md. App. at 254–55 (holding that theories of admissibility "never even obliquely urged" before the trial court were not preserved for review); *with Brock v. State*, 203 Md. App. 245, 270 (2012) (concluding that "by the slimmest of reeds," appellate review was preserved when, although a litigant's "entire argument focused on the admissibility of [a statement] for substantive use under an exception to the rule against hearsay, he did make a reference to use of that statement for impeachment purposes."). This principle, which applies when a litigant *responds* to an opposing party's objection with a specific theory of relevance, is closely related to the well settled proposition that "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also Gutierrez v. State*, 423

Md. 476, 488 (2011).

At trial, the circuit court directly asked Beauchamp for his theory of admissibility. Beauchamp stated that the evidence was relevant because the State "opened up the door that there are these other two [children,]" and should be admitted for the purpose of answering the jury's "legitimate question as to where the other two [children] are." Moreover, when he was given the opportunity to expound on his argument, Beauchamp's counsel affirmatively repudiated other theories of relevance. When asked by the court to explain the relevance of the whereabouts of the two other children to the question of "whether or not Mr. Beauchamp committed these two crimes[,]" Beauchamp's counsel answered any relevance was "[c]ollateral at best." By neglecting to minimally raise the current argument at trial—that the testimony was relevant for presenting Daniels as an alternate suspect in the crime—Beauchamp failed to preserve this argument for our review. We determine that addressing Beauchamp's unpreserved theory of admissibility for the first time upon appeal would not further Rule 8-131(a)'s "twin goals" of preventing unfair prejudice to the parties and ensuring the orderly administration of justice. *Jones*, 379 Md. at 714–15.

III. WE DISCERN NO ERROR IN THE DENIAL OF THE MOTION FOR JUDGMENT OF ACQUITTAL OR IN THE INSTRUCTION OF THE JURY

Beauchamp asserts that the circuit court erred in both instructing the jury and in denying his motion for judgment of acquittal. In Beauchamp's view, both errors stemmed from a variance, allegedly unacknowledged by the court, between the elements of child neglect included in the charging document, and those required by the associated statute and

pattern jury instruction. Count Two of the Criminal Information ("Information") charged that Beauchamp "did neglect [R.], a minor, having been a parent who had permanent care for the supervision of said minor; in violation of Section 3-602.1(b) of the Criminal Law Article of the Annotated Code of Maryland" (emphasis added).[10] This charging language sufficiently comports with Section 3-602.1(b) of the Criminal Law Article ("CR"), which requires the State to allege that a defendant falls within one of four specifically defined classes. ("A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor" may not neglect that minor. (emphasis added)) *Id*.

At the close of the State's case, Beauchamp moved for judgment of acquittal as to the count of neglect, requesting that the court "take note of the actual charging language," and asserting that "there was no information that Mr. Beauchamp, who was not supposed to be at the residence, had permanent care of [R.]"[11] Defense counsel, although admitting that his own proposed jury instruction referenced temporary custody, argued that the State, by choosing to include the phrase "having been a parent who had permanent care for the supervision" in the Information, had bound itself to prove at trial that Beauchamp had

[10] The Information also charged Beauchamp with two other counts that are irrelevant for the purposes of this issue.

[11] At trial, Daniels testified that Beauchamp was "not supposed to be at the residence," but there was no evidence of a legal prohibition preventing him from residing there, or evidence that he resided elsewhere.

permanent care of R.[12] The court, after reviewing the pattern jury instruction, stated that "[t]here is no expectation under the pattern [jury] instruction that a parent have permanent care or temporary care or even a qualification on what kind of care. It simply says, a parent. That at the time of the neglect the defendant was a parent of [R.]" The circuit court, based on its reading of the statutory language of CR Section 3-602.1(b) and the related pattern jury instruction, denied the motion for acquittal, stating:

> I believe that there is evidence upon which reasonable people could disagree. And, Mr. Beauchamp, what that means is, if I can only find one logical outcome from what I have heard through the course of the trial, then I can say, well, a reasonable person could only decide it this particular way.
>
> What I'm saying is that a reasonable person might determine that, yes, Tommy Beauchamp was living there. But a reasonable person might decide Tommy Beauchamp wasn't living there. A reasonable person might say, we've heard that he's the father of [R.], but we haven't seen physical evidence. Whatever it is. Reasonable people could differ on what the evidence that's been presented means.
>
> And therefore, what that means for me is that it should go to the jury and let them decide because that is their role in this trial. This is not a Court trial, so it's not my duty when there is evidence upon which reasonable people could differ.

The defense did not present witnesses, and after resting, defense counsel renewed "its motion for judgment of acquittal on the same grounds." For the same reasons previously stated the court denied the motion. Beauchamp did not object to the court's proposed jury instructions or verdict sheet, and the court instructed the jury in accordance

[12] At trial, the State attributed this language to inadvertently comingling multiple instances of bracketed language when crafting the charging document. We read "permanent care for the supervision of [R.]" as equivalent to "permanent care for [R.]."

with Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 4:07.2A, stating that:

> The defendant is charged with the crime of neglect of a minor. In order to convict the defendant of neglect of a minor, the State must prove: one, that the defendant neglected [R.]; two, that at the time of the neglect [R.] was under 18 years of age; and three, that at the time of the neglect the defendant was a parent of [R.]

Beauchamp again confirmed he had no objections to the instructions, both parties presented their closing arguments, and the case was submitted to the jury, which returned a verdict of guilty as to the child neglect count.

On appeal, Beauchamp argues that "the charging document . . . required a greater number of elements of neglect of a minor than the law actually requires." He asserts that the purpose of a charging document is to place the accused on notice of what he must defend, and the State must prove the offense at trial exactly as charged. Beauchamp supports this claim by relying on *Mohan v. State*, 257 Md. App. 65 (2023). In *Mohan*, this Court reversed a defendant's conviction on the basis that the charging documents described the defendant, who was the nonadoptive stepparent of the victim, "specifically and only as a 'parent'" under CR Section 3-602(b)(1).[13] *Id.* at 83–84. Similarly, Beauchamp asserts that the circuit court erred by not granting his motion for acquittal on the basis the state failed to prove a necessary element of the offense *as charged*—namely, that Beauchamp was not only R.'s parent, but "a parent who had permanent care for the supervision of said

[13] CR Section 3-602(b)(1) is the statute prohibiting sexual abuse of a minor. Like the child neglect statute relevant to this case, Section 3-602(b) prohibits "[a] a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor" or "[a] household member or family member" of a minor from engaging in the prohibited conduct. Md. Code Ann. CR §§ 3-602(b)(1)–(2), 3-602.1(b).

minor." For the same reason, Beauchamp argues that the court erred in instructing the jury, as the provided instruction only required that the jury find that Beauchamp was R.'s "parent," but did not require the jury to find that he had any degree of responsibility for R.

The State disagrees. As a threshold matter, the State asserts that Beauchamp affirmatively waived his ability to challenge the jury instruction by twice declining to note an objection, addition, or exception. The State further argues that the language of the charging document should be read conjunctively, and that Beauchamp was therefore charged both as "a 'parent' of the victim and a person with 'permanent care for the supervision' of the victim." Separately, the State argues that there was in fact record evidence sufficient to show that Beauchamp had "permanent care" for R., and therefore the motion for acquittal was properly denied. Finally, the State asserts that any difference between the charging document and the jury instructions did not mislead or prejudice Beauchamp in preparing his defense.

A. Preservation of the Challenge to the Jury Instructions

At the outset, we reject Beauchamp's challenge to the jury instructions, as he affirmatively waived his right to appellate review. *Rich*, 415 Md. at 580. Maryland Rule 4-325(f) provides that "[n]o party may assign as error the giving or failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." *See Bowman v. State*, 337 Md. 65, 67 (1994) ("[A]ppellate review of a jury instruction will not ordinarily be permitted unless the appellant has objected seasonably so as to allow the

trial judge an opportunity to correct the deficiency."); *see also*, *Rich*, 415 Md. at 81 ("Waiver occurred . . . because the defendant considered the controlling law, or omitted element, and, in spite of being aware of the applicable law, proposed or accepted a flawed instruction.").

At trial, Beauchamp's counsel was given the opportunity to propose jury instructions,[14] provided with the instructions the court planned to give and was twice asked if he had additions or exceptions to the instructions. At no point did Beauchamp lodge an objection to the instructions, and twice affirmatively stated that he did not wish to do so. Because of his lack of objection to the jury instructions at trial, Beauchamp is precluded from challenging them for the first time on appeal.[15] Md. Rule 4-325(f); *Bowman*, 337 Md. at 67.

[14] Beauchamp's own proposed jury instruction did not contain a requirement for the State to prove Beauchamp had permanent custody or care of R.

[15] Although a formal objection to an allegedly flawed jury instruction is preferred, an objection that "substantially complie[s]" with Rule 4-325(f) may also preserve a claim for our review. *Sequeira v. State*, 250 Md. App. 161, 197 (2021). In *Gore v. State*, the Supreme Court of Maryland outlined the conditions required for substantial compliance with Rule 4-325(f):

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

309 Md. 203, 209 (1987).

The closest Beauchamp came to meeting the standard of substantial compliance with Rule 4-325(f) occurred while making his motion for acquittal. Beauchamp stated: "my jury instruction for the neglect of a minor encompasses the pattern instruction which includes

B. Denial of the Motion for Acquittal

We next examine Beauchamp's contention that the court erred in denying his motion for acquittal at the close of the State's case. We analyze a "question regarding the sufficiency of the evidence in a jury trial by asking whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential element of the crime beyond a reasonable doubt." *Grimm v. State*, 447 Md. 482, 495–96 (2016) (citations and internal quotations omitted). "We conduct such a review, however, keeping in mind our role of reviewing not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the state." *Smith v. State*, 415 Md. 174, 185–86 (2010).

Beauchamp's argument again primarily rests on analogizing his case with *Mohan v. State*, where we determined that a trial court erred in concluding that a defendant, who was "a step-parent with parental responsibilities," could be considered a "parent" under CR section 3-602(b)(1). 257 Md. App. at 75. In *Mohan*, we determined that the General

temporary. And frankly, I would be arguing when we talk about the jury instructions themselves, that that is inappropriate."

We do not find this somewhat ambiguous statement, made during a motion for acquittal, as equivalent to an "objection to the instruction" that "appear[s] on the record" and is "accompanied by a definite statement of the ground for objection." *Gore*, 309 Md. at 209; *see also Bey v. State*, 140 Md. App. 607, 628 (2001) (noting that the party challenging jury instructions must "state clearly what the problem is and [] state clearly what precise instruction is being requested. A mere passing allusion to a difficult conceptual area will not suffice."). Nor does the record indicate that the circumstances of the trial were such that "a renewal of the objection after the court instructs the jury would be futile or useless." *Gore*, 309 Md. at 209.

Assembly did not intend the term "parent," as used in CR section 3-602(b)(1), to include individuals who are *de facto* parents, and limited the term "parent" to biological or adoptive parents. *Id.* at 81, 87. This Court noted that "the General Assembly clearly delineated the statute by including a disjunctive in the provision: 'parent or other person who has permanent or temporary care or custody.'" *Id.* at 80 (citing CR § 3-602(b)(1)). However, although he was not a biological or adoptive parent of the victim, Mohan's Statement of Charges provided that: "[Mohan] … did cause sexual abuse to [victim], a minor, the defendant being said child's parent." *Id.* at 85 n.9. Likewise, Mohan's Criminal Information stated that "[Mohan] did cause sexual abuse to [victim], [a] minor, the defendant being said child's parent. *Id*. As Mohan was not charged generally under the statute, but rather was charged "specifically and only as a parent," this Court reversed his conviction and remanded for resentencing. *Id.* at 85, 89.

In the instant case, Beauchamp's Criminal Information stated that Beauchamp "did neglect [R.], a minor, having been a parent who had permanent care for the supervision of said minor[.]" (emphasis added). In *Mohan*, the defendant was both charged and convicted only as a "parent," a category that factually did not apply to him, *id.* at 75, 85, and therefore, we reversed, as there was not sufficient evidence for a reasonable factfinder to determine that the State had met its burden of proving all elements of the crime as charged. By contrast, here, the Information correctly described Beauchamp as a parent,[16] albeit one who had "permanent care for the supervision" of his child. Beauchamp does not allege that there

[16] The parties do not dispute that Beauchamp is R.'s biological father.

was insufficient evidence to allow the jury to find that he had neglected R., or that he was R.'s parent. Therefore, Beauchamp's sole contention in challenging the denial of his motion for acquittal is that the evidence in the record was insufficient to enable any reasonable factfinder to conclude, beyond a reasonable doubt, that Beauchamp had permanent care of R., and the circuit court failed to consider this requirement in denying his motion. *See Taylor v. State*, 346 Md. 452, 457 (1997).

Beauchamp asserts that the circuit court erred by failing to apply the charging document as written when adjudicating his motion for acquittal. Specifically, in ruling on Beauchamp's motion, the trial judge stated that:

> The requirements of care, custody or responsibility for supervision only apply in this pattern instruction to the bracketed language that deals with a person with permanent or temporary care. There is no expectation under the pattern instruction that a parent have permanent care or temporary care or even a qualification on what kind of care. It simply says, a parent. . . . That does not impose the limitations that [Beauchamp] suggest[s] need to be established and proven."

Later, the court noted that "there seems to be a mingling of the two bracketed languages in that it elects parent, but then it also includes the requirement of permanent care for the supervision of said minor which I do not believe that it's required under the law." Both statements are supported by the record. Neither CR section 3-601.1(b) nor MPJI-Cr 4:07.2A inherently require someone charged as a 'parent' under the child neglect statute to have any specific level of care over the child. Standing on their own, the court's conclusions of law are not erroneous. However, Beauchamp reads the court's statements to show that the trial judge improperly relied on the pattern jury instructions, and not the Information, in determining the number of elements that the State must have proved for its

case to survive a motion for acquittal. We do not agree. A review of the record shows that the court specifically *did* consider the factor that Beauchamp had "permanent care for the supervision" of R.

In making his motion for acquittal, Beauchamp's trial counsel stated that "the reason [for the motion] is there was no information that Mr. Beauchamp, who was not supposed to be at the residence, had permanent care of [R.]." He went on to say, "there's no evidence that Mr. Beauchamp was taking care of the child." However, in ruling on Beauchamp's motion for judgment of acquittal, the trial judge stated:

> I believe that there is evidence upon which reasonable people could disagree. . . . What I'm saying is that a reasonable person might determine that, yes, Tommy Beauchamp was living there. But a reasonable person might decide Tommy Beauchamp wasn't living there. . . And therefore, what that means for me is that it should go to the jury and let them decide because that is their role in this trial. This is not a Court trial, so it's not my duty when there is evidence upon which reasonable people could differ.

Here, by referencing that there was "evidence upon which reasonable people could disagree," with respect to the question of whether "Beauchamp was living [with Daniels and R.]" the circuit court found that there was evidence in the record sufficient to support a conviction, even assuming that the Information was applied exactly as written. In so holding, the circuit court had evidence available in the record such as Daniels' testimony that Beauchamp was R.'s biological father, resided with her and R., kept clothes and medications in the apartment, and spent the night in the home.

Testimony showed that Beauchamp was both R.'s father and resided in the same home as R. There was no evidence that Beauchamp's parental rights had been terminated,

or that there was a legal prohibition preventing him from residing in the home with Daniels and R. This evidence was sufficient, especially in the light most favorable to the State, to allow a reasonable juror to make the inference that Beauchamp had permanent custody over R.[17] *See Smith* 415 Md. at 185–86.

As a result, the circuit court's ruling on the motion for acquittal, which *did* apply Beauchamp's theory that the charging document's language required evidence of his permanent custody over R., was not erroneous.[18]

Because Beauchamp did not preserve his challenge to the jury instructions, and the circuit court's ruling on his motion for acquittal was not an abuse of discretion, we discern no reversible error arising from the court's application of the language of the Criminal Information.

[17] It is a reasonable inference that a father who resides with his minor child has custody over that child. As a default status, paternal custody is enshrined in Maryland caselaw, common law, and statutory law. *See Boswell v. Boswell*, 352 Md. 204, 217 (1998) ("a parent has a fundamental right to the care and custody of his or her child."); *Petrini v. Petrini*, 336 Md. 453, 459 (1994) ("That both parents have a legal as well as a moral obligation to support and care for their children is well settled in Maryland. This legal duty is based on both common law and statutory authority."); Md. Code Ann. Family Law Article § 5-203(a)(1) ("The parents are the joint natural guardians of their minor child.").

[18] Even if the circuit court had *not* considered Beauchamp's motion for acquittal in light of the charging document's language, and only applied the required elements of the statute, any resulting error would have been harmless. For the reasons stated above, the record evidence was, beyond a reasonable doubt, sufficient to allow a factfinder to reasonably infer that Beauchamp had permanent custody of R., and was therefore, even under Beauchamp's theory of the requirements imposed on the State by the language of the charging document, sufficient to allow a jury to convict him. Thus, the denial of the motion for acquittal was at most harmless error. *See Belton v. State*, 483 Md. 523, 542 (2023).

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