UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0066

September Term, 2015

PAUL ANDREW BOND

v.

STATE OF MARYLAND

Woodward,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: January 7, 2016

On December 4, 2014, following a three-day jury trial in the Circuit Court for Montgomery County, the jury found Paul Andrew Bond, appellant, guilty on charges of first degree burglary and malicious destruction of property. The court subsequently sentenced appellant to serve a period of incarceration of fifteen years, all but six years suspended in favor of five years of supervised probation for his burglary conviction, and an additional concurrent sentence of sixty days for malicious destruction of property.

In his timely filed appeal, appellant raises a single question for our consideration, which we have rephrased as follows:

> Did the trial court err in failing to instruct the jury regarding the defense theories of voluntary intoxication and reasonable belief?

Because appellant failed to properly preserve this issue for appellate review, we decline to address it at any length. We briefly note the following:

FACTUAL AND PROCEDURAL HISTORY

Around 1:00 a.m. on the morning of June 15, 2014, several officers of the Montgomery County Police Department were dispatched to the home of Jacqueline Raymo after a neighbor called 911 and reported hearing a loud crash in Raymo's home.[1] When officers arrived, they found that a window into the basement level of the townhouse had been broken and the sliding door to the kitchen was ajar. The officers entered the home and located appellant, who was hiding in the attic. At the time he was apprehended, the officers

[1]Raymo was on vacation at the time the burglary occurred. The next-door neighbor who called 911 was appellant's then girlfriend, whom he married prior to his trial.

observed that appellant smelled like alcohol, his face was flushed, and his speech was slightly slurred.

At the close of appellant's trial, defense counsel requested that the trial court provide a jury instruction on voluntary intoxication as a defense to the charge of first degree burglary. The trial court considered case law and argument from both the defense and the State, and ultimately denied defense counsel's request. Defense counsel raised no objection to the court's ruling. Thereafter, the trial court agreed to give an instruction on the lesser included charge of fourth degree burglary, whereupon defense counsel requested that the trial court include the optional language in the pattern instruction for fourth degree burglary that required the jury to find "that the defendant did not honestly and reasonably believe that [he] had the right or invitation to enter the premises[.]" After consulting the fourth degree burglary statute, Maryland Code §6-205 of the Criminal Law Article, the trial court denied the request, finding that no evidence had been presented to support the instruction. Again, defense counsel did not raise any objection to the trial court's ruling. Nor did defense counsel raise any objection to the trial court's failure to provide the two requested instructions during the bench conference following the court's instruction of the jury. The jury convicted appellant on one count of first degree burglary and one count of malicious destruction of property.

ANALYSIS

Appellant contends that the trial court erred by refusing to provide the requested jury instructions on voluntary intoxication and reasonable belief. Appellant concedes that "defense counsel did not renew his requests after the judge had completed instructing the jury." He asserts, however, that "given that defense counsel's requests had been argued and unequivocally decided mere moments before the jury instructions were given, it was 'crystal clear' that there was ongoing objection, and there was no question of whether counsel had 'acquiesced.'"

Maryland Rule 4-325(e) provides, in pertinent part, that "[n]o party may assign as error . . . the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury." "The language of the rule plainly requires an objection after the instructions are given, even though a prior request for an instruction was made and refused." *Johnson v. State*, 310 Md. 681, 686 (1987). As the Court of Appeals explained in *Sims v. State*, 319 Md. 540 (1990):

> We have said that under certain well-defined circumstances, when the objection is clearly made before instructions are given, and restating the objection after the instructions would obviously be a futile or useless act, we will excuse the absence of literal compliance with the requirements of the Rule. *Gore v. State*, 309 Md. 203, 208-09 (1987); *Bennet v. State*, 230 Md. 562 (1963). We make clear, however, that these occasions represent the rare exceptions, and that the requirements of the Rule should be followed closely. Many issues and possible instructions are discussed in the usual conference that takes place between counsel and the trial judge before instructions are given. Often, after discussion, defense counsel will be persuaded that the

> instruction under consideration is not warranted, and will abandon the request. Unless the attorney preserves the point by proper objection after the charge, or has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction, the objection may be lost. *See Johnson v. State*, 310 Md. 681, 685-89 (1987).

Id. at 549

Due to defense counsel's failure to interpose any objections to the trial court's rulings either at the time they were made or after the jury was instructed, we are left in the dark regarding defense counsel's intentions. From the bare transcript of appellant's trial, we are unable to determine whether defense counsel acquiesced in the judge's determination that there was no evidence presented to support the requested instructions or, whether having considered the court's ruling, counsel decided to abandon the request for the instruction as a matter of trial tactics or, whether he intended to persist in his request.[2] Accordingly, we

[2]Notably, during closing argument, defense counsel conceded that appellant "knew he wasn't supposed to be in this, in this house. He knew he wasn't supposed to break the window."

conclude that this issue was not properly preserved for our review and we decline to consider it any further. [3]

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

[3]Even had this issue been properly preserved, we would conclude that the trial court did not abuse its discretion by declining to provide either the voluntary intoxication or reasonable belief instructions. There was no evidence presented during appellant's trial sufficient to indicate either that appellant was intoxicated "to such a degree at the time of the offense that [he] was unable to form the intent necessary to commit the crime," *Wood v. State*, 209 Md. App. 246, 315 n. 20 (2012), *aff'd*, 436 Md. 276 (2013), nor that appellant harbored a reasonable belief that he was authorized to enter the victim's home. Because there was no evidence, much less the "some evidence" required, to generate these issues, the trial court did not abuse its discretion by declining to provide the requested instructions. *See Grandison v. State*, 341 Md 175, 211 (1995), *cert. denied*, 519 U.S. 11027 (1996) (requiring, in pertinent part, that an instruction be "generated by the evidence").