UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0358

September Term, 2015

ANDRE LEE GARRETT

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: April 29, 2016

Following a motor vehicle accident, Appellant Andre Lee Garrett was issued citations for violating numerous sections of the Transportation Article. Garrett requested a trial by jury, after which he was convicted of seven offenses, including failure to remain at the scene of an accident.[1] He was sentenced to a 60-day term of incarceration, which the court suspended in favor of one year of unsupervised probation, and he was assessed five points to his driving record and fined $250. Garrett noted a timely appeal, in which he asks us to consider whether the circuit court erred in failing to instruct the jury that his failure to remain at the scene of the accident had to be willful.

We conclude that, assuming the issue was preserved for appellate review, the circuit court did not abuse its discretion in denying the requested instruction, and we affirm the judgments of the circuit court.

BACKGROUND

On February 22, 2014, the car Garrett was driving collided with a vehicle driven by Sharayah Cooper at the intersection of Indian Head Highway and Fort Washington Road in Prince George's County. Cooper testified that after the collision, the other car "just kept going and left the scene."

Prince George's County Police Officer Ricci Villaflor was driving a patrol vehicle in the area of the intersection and witnessed the accident. He testified that, after the collision, Garrett's vehicle entered the northbound lanes of Indian Head Highway, going

[1] Garrett was also convicted of negligent driving, speed greater than prudent, failure to control motor vehicle to avoid collision, failure to obey traffic control device, failure to stop at a steady red light, and reckless driving.

southbound, against the flow of traffic, and almost hit his patrol vehicle. Officer Villaflor took evasive action to avoid the collision, then activated his lights and sirens, made a U-turn, and followed Garrett at a speed of about 30 to 40 miles an hour, "trying to catch up." According to the officer, Garrett "wasn't stopping." The officer used the public address system on the patrol vehicle to broadcast "three to four" orders for Garrett to pull over, and he also shined a spotlight on Garrett, but "he still refused to stop." Other vehicles were "swerving all over the road trying to avoid" Garrett's vehicle. Eventually, Garrett stopped his vehicle.

Officer Villaflor did not recall how long he followed Garrett before Garrett pulled over. A video from the dash camera of the patrol vehicle that had recorded the accident, as well as Officer Villaflor's attempts to pull Garrett over, was shown to the jury. Defense counsel stated for the record that, according to the time stamp on the video, Garrett applied his brakes 35 seconds after Officer Villaflor began following him.

Garrett testified that, upon impact, the engine of his car shut off and he was "knocked" into oncoming traffic. He explained that he did not stop at the intersection because, in his words, "if I stopped at the oncoming traffic I will cause a major collision. So the appropriate thing [ ] to do was to get out of harm's way and avoid any other collision to get over to . . . the right hand side and allow the sirens of the police officer to calm the traffic down, and then stop." He did not hear an order from the police car's loudspeaker to pull over. He also stated that he didn't stop right away because, "the car was actually off[,] I let it coast and slow down to the down the hill [sic]. Once I got to a safe place for me and

the officer, I stopped the car." After Garrett stopped, he got out of his car to go back to the scene, but was instructed by the officer to get back in his car.

DISCUSSION

Maryland Rule 4-325(c) provides: "The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." "We review a trial court's decision to give a particular jury instruction under an abuse of discretion standard." *Appraicio v. State*, 431 Md. 42, 51 (2013) (citation omitted). The trial court's decision whether to give a jury instruction, especially a pattern jury instruction, "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Atkins v. State*, 421 Md. 434, 447 (2011) (citation and internal quotation marks omitted).

In determining whether a trial court has abused its discretion we consider "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Bazzle v. State*, 426 Md. 541, 549 (2012) (internal quotation marks omitted) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)).

Garrett contends that the circuit court abused its discretion in refusing to instruct the jury that willfulness was an element of the offense of failing to remain at the scene of an accident. The State responds that the issue was not preserved for appeal because Garrett did not request an instruction that failure to remain had to be "willful." The State further responds that even if Garrett had requested such an instruction, it was not a correct

statement of the law, and therefore, the court's instructions were proper. Assuming that the issue was preserved for appeal, we agree with the State on the merits.

The conviction Garrett challenges in this appeal is for a violation of Maryland Code (1977, 2012 Repl. Vol.), Transportation Article ("TR"), § 20-103(b). The court instructed the jury by reading verbatim from the statute, which provides that "[t]he driver of each vehicle involved in an accident that results only in damage to an attended vehicle or other attended property shall return to and remain at the scene of the accident. . . ."[2]

The specific language that defense counsel requested the court to add to the instruction on failure to return to or remain at the scene was "that defendant was able and had the opportunity to safely return to the scene of the accident after the accident occurred." Even if we interpret this language as a request for an instruction that one of the elements the State had to prove was that the failure to return to the scene was "willful," and assume that the objection was properly renewed after the court instructed the jury,[3] we agree with the State that it is not a correct statement of the law.

[2] The court omitted the remainder of the language of TR § 20-103(b), which requires that the driver render reasonable aid and provide personal information, but that is not important to the issue before us.

[3] Concerning preservation of objections to jury instructions, Maryland Rule 4-325(e) provides the following:

> (e) Objection. No party may assign as error the giving or the 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. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however (continued…)

Garrett was convicted of a statutory offense. When interpreting statutes, courts must determine and implement the legislature's intent. *Haile v. State*, 431 Md. 448, 466 (2013). The Court of Appeals stated in *Haile*:

> We begin this inquiry by looking, first, to the plain language of the statute, on the tacit theory that the Legislature is presumed to have meant what it said and said what it meant. If there is no ambiguity in that language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends[.]

Id. at 466-67 (citations and internal quotation marks omitted). We do not "add or delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, nor do we construe a statute with forced or subtle interpretations that limit or extend its application." *Id.* at 467 (citation and internal quotation marks omitted). "[I]f the words of a statute clearly and unambiguously delineate the legislative intent, ours is an ephemeral enterprise. We need investigate no further but simply apply the statute as it reads." *Wyatt v. State*, 169 Md. App. 394, 400 (2006) (internal quotation marks omitted) (quoting *Price v. State*, 378 Md. 387 (2003)).

TR § 20-103(b) is unambiguous. Its plain language provides that a driver "shall return to and remain at the scene of the accident," until aid is rendered and information is provided. It contains no language that would require the State to prove that the failure to return to and remain at the scene was willful. Had that been the legislature's intent, it would have included language to that effect, as it did in TR § 21-904, which provides that

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> take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

a driver who has been ordered to stop by a police officer "may not attempt to elude the police officer by: (1) *Willfully* failing to stop the driver's vehicle[.]" (Emphasis added).

Garrett was not prevented from arguing to the jury that he should not be found to have violated the statute because he was unable to remain at the scene due to an emergency situation or circumstances beyond his control. In fact, defense counsel presented such an argument. But there is nothing in the statute requiring the State to prove that a driver left the scene willfully. Accordingly, to refuse to give such an instruction to the jury is not an abuse of judicial discretion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.