UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1140 & 1141

September Term, 2015

ZAINAB KAMARA

v.

STATE OF MARYLAND

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

JJ.

Opinion by, Kehoe, J.

Filed: June 27, 2016

After a bench trial, Zainab Kamara was convicted by the Circuit Court for Prince George's County of kidnapping, false imprisonment, as well as 25 counts of abuse of vulnerable adults in her care, fraud, theft and related charges.[1] Appellant has appealed and raising the following questions for our review:

I. Did the lower court err in denying [appellant's] request for a postponement?

II. Did the lower court fail to announce a verdict on Count 38 (false imprisonment) and Count 53 (identity fraud), requiring this court to vacate those convictions and corresponding sentences?

III. Was the evidence insufficient to support the convictions?

IV. Did the lower court base the sentences on impermissible considerations?

We will vacate appellant's conviction and sentence as to count 53 (identity fraud) and otherwise affirm.

FACTS

On October 17, 2013, police were called to 5401 Kenilworth Avenue in Riverdale, to check on the welfare of an elderly man, later identified as Sekou Traore ("Traore"). Sergeant

[1]Appellant was convicted of:

- six counts of abuse/neglect of a vulnerable adult by a custodian,
- one count of false imprisonment,
- one count of kidnapping,
- two counts of second-degree assault,
- six counts of theft,
- three counts of taking, stealing, or carrying a credit card belonging to another,
- one count of obtaining property of a vulnerable adult, and
- eight counts of fraud/theft of personal identity information.

Joseph Sommerville responded and found a "disheveled" Traore who advised that he had "left from an apartment in Bladensburg to get food," had "become disoriented" and was "wandering the street for approximately ten hours." Sergeant Sommerville noticed that Traore had a "nasty" bandage on his left foot that looked like it was "soaked with pus." Sergeant Sommerville took Traore home to 5213 Newton Street, Apartment 302 ("the apartment") in Bladensburg, where Traore said he had been living since being released from a hospital. Upon entering the apartment, Sergeant Sommerville came into contact with appellant, who identified herself as "Ann Kamara." Sergeant Sommerville noted that the apartment was "cluttered with beds" and looked like it was set up for multiple people to live in the "tiny living room." Appellant claimed not to know of Traore's hospital stay, advising that Traore was just a "friend of a friend" and he was renting a room from her.

On February 12, 2014, investigators from the Department of Social Services responded to the same apartment to check on the "well-being of a client" after receiving a call on their hotline. After receiving no response at the door, they flagged down a police officer and requested assistance. The investigators and the police officer eventually made entry into the apartment and observed it to be in "deplorable condition." It was dirty, cold, there was trash on the floors, and the stove was covered in food debris. There was minimal food in the refrigerator and cupboards. The sole bathroom was "unsanitary" and had dirty water in the tub. One bedroom contained a hospital bed and a mattress on the floor. The bedding and walls were dirty and there were medical supplies in a bag laying on the floor.

The police noted that the second bedroom "was totally opposite from any other room in the house." It was clean and contained a king sized bed and a large television. Multiple cell phones, iPads, and "high dollar" pocketbooks were found in the room. The closet was filled with high-end women's clothing, some with tags still on them, and a clothing rack in the room contained "little boys clothing," some also with tags. The occupants of the apartment told police that this room belonged to appellant and that they were not allowed to enter.

Traore, Joyce Waltermeyer ("Waltermeyer"), Diane Waterholter ("Waterholter"), Wanda Palmer ("Palmer"), and Keith Thompson ("Thompson") were in the apartment. Waltermeyer, sixty-seven years old, was laying on a cot in the living room. The police noticed that there was a small puddle underneath the cot and what appeared to be urine was dripping through the mattress and onto the floor. Upon entry into the apartment, an investigator immediately went to Waltermeyer, whereupon Waltermeyer asked for help, and informed the investigator that she wanted to get out of the apartment. Waltermeyer was disheveled and had large sores and a rash on her chest area. An ambulance was called and Waltermeyer was transported to the hospital. Waterholter, who was in her sixties, was noted to be very thin and wearing dirty clothing. She appeared to the officers not to be "a hundred percent about everything that was going on." She requested assistance with housing and was removed from the apartment. Traore also advised that he did not wish to remain in the apartment and requested assistance with housing.

On February 25, 2014, the police responded to the apartment and encountered Mary Lazinski ("Lazinski"). Lazinski, who had recently been discharged from a rehabilitation center due to the discontinuance of her insurance, suffered from cerebral palsy and had mobility issues as a result. She was the only person in the apartment on that day and requested assistance leaving as she did not wish to remain in the apartment. She was transported to the hospital for treatment.

On March 27, 2014, the police executed a search warrant at the apartment. Upon entry, the police encountered Gregory Mann ("Mann"). Mann, who was in his late sixties, was trembling and "appeared to be in somewhat stress or distress from some type of medical condition." Medical personnel were contacted and Mann was transported to the hospital.

Appellant was not present while the police and the Department of Social Services were in the apartment, and the police left a written notice to contact them. Despite additional attempts to contact her, appellant never contacted the police, in response to the notice, or in an attempt to check upon the welfare of the residents who had been removed from the apartment.

The apartment was inspected on the same date the search warrant was executed, and was determined to be unfit for habitation due to the lack of a working stove, unsanitary conditions, blocked ingress/egress, and a low temperature reading. Upon notification of the inspection, appellant contacted the County Inspections Department and advised that she was

operating a "boarding room." The property, however, did not have a rental license or assisted living facility license.

The police conducted an extensive investigation and interviewed the former residents of the apartment. Their investigation revealed that appellant had contacted various hospitals and shelters and advised staff that she operated an "assisted living facility." In a brochure provided to the hospitals and shelters, she advertised that her company, "Anna's Community Services, Inc." provided "[h]ousing and [a]ssisted living to people that [sic] receiving SSI, SSDI, and Disability." The brochure explained that clients would be provided with "24hrs staffing with the assistance of cooking, laundry, medication dispense [sic]" and that they would receive "three meals a day with snack in between [sic]." With the help of staff at the hospitals and shelters, she identified patients who had significant health problems, limited financial means and, in some cases, like that of Palmer who was diagnosed with schizophrenia and psychosis, limited cognitive ability. In meetings with the individuals who would eventually come to reside at her apartment, she promised to take care of their "daily needs" and informed them that there was a nurse on site to take care of them.

In the case of Waltermeyer, who was reluctant to leave the shelter where she had resided for five years, appellant promised that, if Waltermeyer did not like the facility after visiting it, she would return her to the shelter. Instead, when appellant transported Waltermeyer to the apartment to visit, she refused to allow Waltermeyer to leave after Waltermeyer expressed the desire to return to the shelter. Waltermeyer was physically unable

to leave the third-floor apartment on her own. Throughout the duration of Waltermeyer's stay in the apartment, appellant kept all of her belongings, including her medical card, license, and social security card in her vehicle.

Jack Crawford lived at the apartment in the winter of 2013-14. He was living in an assisted living facility before moving into the apartment and had significant medical problems. He was largely confined to a wheelchair during his stay in the apartment and needed assistance with many tasks including maneuvering his wheelchair and using the bathroom. He was admitted to a VA hospital on January 2, 2014, the same date he left the apartment. He died prior to trial.

Appellant did not give the residents keys to the apartment, and told them not to answer the door if she was not present. Appellant was rarely in the apartment during the day and no other caretaker was ever present to take care of their needs. Appellant did not assist the residents with food preparation, mobility issues, or in obtaining and using medications. Waltermeyer testified that she took sponge baths because she could not get in the bathtub and didn't eat much while she lived in the apartment. Traore testified that appellant had struck him on a couple of occasions during disputes over his personal property.

The police investigation revealed that appellant received $500 to $600 each month from each resident by transporting them to an ATM to withdraw cash or by using their benefits cards herself to withdraw payment. It was also discovered that appellant had, without

authorization, used several residents' benefit cards and credit cards to purchase gas, pay personal bills, purchase international calling calls, and buy personal items at high-end stores.

An arrest warrant was issued for appellant at the conclusion of the police investigation and she was apprehended after a brief car and foot chase on April 11, 2014. Appellant's vehicle was searched and multiple documents, including birth certificates, driver's licenses, social security cards, medical cards, and medical records belonging to various individuals, including Waltermeyer and Waterholter, were found. In addition, the personal belongings of Waterholter, Waltermeyer, and Crawford were found in the vehicle. Receipts from high-end stores were also found in the vehicle. Appellant was interviewed and advised that she was a "med tech nurse" operating a "home health care business, 'Anna's Community Services.'" After appellant's apprehension, the police returned to her apartment and discovered Mann in the apartment. The police contacted Mann's brother who responded to the apartment and took Mann into his care.

As a result of the police department's investigation, appellant was charged on two indictments with a total of 51 counts of kidnapping, false imprisonment, abuse of vulnerable adults, theft and related charges. as well as 25 counts of abuse of vulnerable adults in her care, fraud, theft and related charges. The two criminal cases, CT 141017X and CT-140514 were consolidated for trial, which took place on March 31–April 2, 2015. (For the sake of

simplicity, we will identify the cases by their Court of Special Appeals Case Numbers, that is "Case No. 1140," will refer to CT 141017X , and "Case No. 1141" will refer to CT-140514.)

We will provide additional facts as relevant to our discussion of the issues.

ANALYSIS

I. The Request for a Postponement

Appellant contends that the trial court abused its discretion by denying her request for a postponement that she made on the morning of the first day of trial. Appellant argues that the court should have granted her postponement request in order to give her more time to consider the State's amended plea offer or, "at the very least, referred the request to the administrative judge for consideration." The State responds that the court committed no error because appellant had "sufficient time to consider the State's offer," the case had been previously continued, and the parties were prepared for trial. We hold that the trial court properly exercised its discretion when it denied appellant's postponement request.

Appellant was indicted in Case No. 1141 on April 8, 2014, and counsel entered their appearance on behalf of appellant on April 15, 2014. She was indicted in Case No. 1140 on July 15, 2014 and arraigned on July 25, 2014. The first trial date in Case No. 1141 was scheduled for July 30, 2014.[2] A defense postponement request was granted after new counsel for appellant had entered their appearance and needed more time to prepare for trial. The next

[2]This case was initially docketed as two separate cases below, which were ultimately consolidated for trial, as appellant was charged on two separate indictments.

trial date was scheduled for September 18, 2014, but it too was postponed after both parties moved to consolidate 1140 with 1141 and requested more time to prepare. The cases were consolidated and a trial date was scheduled for December 1, 2014. On that date, appellant's counsel was granted a postponement due to "discovery issues." The next trial date, scheduled for January 13, 2015, was postponed due to a medical emergency involving counsel for appellant. Finally, the last trial date was scheduled for March 30, 2015 and was continued for one day to March 31, 2015 because counsel for appellant was ill.

On March 31, 2015, that is, the first day of trial, appellant appeared before the court for trial and requested "another week to consider the plea." The court denied appellant's request to see the administrative judge[3] for a hearing on the request, stating, "I don't believe they would find good cause" and noted that there were "a number of potential witnesses in the courtroom." Instead, the trial court adjourned the proceedings briefly to allow appellant an opportunity to discuss the terms of the State's plea offer with her lawyer and her family.

When the court reconvened, appellant's counsel announced that appellant would accept the State's plea offer. The parties then engaged in an extensive discussion with the court regarding the particulars of the plea, during which time appellant advised her attorney that she had changed her mind and no longer wished to take the plea offer. The court re-advised appellant of her trial rights and discussed with her the nature of the proposed plea.

[3] *See* Md. Rule 4-271 ("If a circuit court trial date is changed, any subsequent changes of the trial date may be made only by the county administrative judge or that judge's designee for good cause shown.").

Ultimately, appellant informed the court that she did not want to plead guilty to the counts on which the State was seeking guilty pleas, because, in her view, the period of incarceration contemplated by the plea agreement was "too much." She again requested "more time, like a week or so" to consider the plea." The court denied her request and the trial was started later that day.

We review a trial court's ruling on a motion to postpone for abuse of discretion. *Evans v. State*, 304 Md. 487, 514 (1985). "Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Campbell v. State*, 373 Md. 637, 666 (2003) While Md. Code Criminal Procedure Article § 6–103(b) and Maryland Rule 4–271(a)(1) authorize only county administrative judges or those judges's designees to *grant* motions to postpone, "any circuit court judge may *deny* a motion to postpone in a criminal case." *Howard v. State*, 440 Md. 427 (2014) (emphasis added).

Appellant was arraigned on the second indictment more than eight months prior to trial, giving her ample time, as the State points out, "to consider whether she was willing to plead guilty and on what terms." After consolidating the two cases, the matter was postponed two times, at appellant's request, before reaching trial. On the morning of trial, appellant was given an opportunity to discuss the State's plea offer with her counsel and her family who was present in court. After initially rejecting the offer, the court engaged in extensive discussion with her regarding the plea offer and her trial rights. Appellant posed a counter-

offer to the court and there was no indication that the State was considering the counter-offer. Appellant again rejected the terms of the State's plea offer, stating that she did not want to plead guilty to the counts presented, nor did she want to serve the jail time contemplated by the plea. In light of the prior postponements, the presence of a number of witnesses, the time given to the appellant to consider the State's plea offer, and her rejection of the terms of the plea offer on two occasions, we find the court did not abuse its discretion when it denied appellant's postponement request.

II. The Rendition of the Verdicts

Appellant argues that the trial court failed to announce a verdict on count 38 (false imprisonment) and count 53 (identity fraud) in Case No. 1140 and, as a result, this Court must vacate the convictions and sentences on those counts. The State concedes that the trial court failed to render a verdict on count 53 and agrees that the sentence on that count should be vacated. On count 38, however, the State argues that, "[a]lthough the court did not utter the word 'guilty' in rendering its verdict, it used words which made unmistakably clear that it found [appellant] guilty of that charge." We agree with the parties that no verdict was announced with regards to count 53; we therefore vacate the guilty verdict and sentence imposed for that offense. The court's verdict as to count 38, however, is a different matter.

At the conclusion of the bench trial, the court issued its verdict on all counts, seriatim. The court did not make any mention of count 53 in Case No. 1140 during its recitation of the

verdict. With regards to count 38 in Case No. 1140, which charged appellant with the false imprisonment of Joyce Waltermeyer, the court stated the following:

> Counts 33 and 35, the verdict will be guilty.
>
> Count 38, false imprisonment of Joyce Waltermyer.
>
> Count 35, was the neglect of Ms. Waltermyer, that would be again, guilty for the conditions that she was in, false imprisonment. She was unable to, I believe the evidence shows she was unable to leave the apartment. And the court finds that the evidence is sufficient that she was kept there against her will.

Maryland Rule 4-327(a) requires that a jury verdict be "returned in open court." The rule "mandates an oral announcement of the verdict upon the conclusion of the jury's deliberations to enable the defendant to exercise the right to poll the jury as to the verdicts." *Jones v. State*, 384 Md. 669, 684 (2005). Where an oral verdict is not announced, "[a] verdict of guilt cannot stand and any sentence apportioned thereto must be vacated." *Id.* At 686. This legal principle "is fully applicable in a nonjury criminal case." *State v. Prue*, 414 Md. 531, 539 (2010). The Rules do not require, however, that the verdict be announced in a particular form. Rule 4-328 simply requires that a "court sitting without a jury shall render a verdict upon the facts and the law." Where the form of the verdict is at issue, the Court of Appeals has stated:

> Where the meaning of the verdict is so unmistakable, mere inartificiality in its form will not be sufficient to defeat justice by a nullification of a verdict which plainly declared the intent of the jury.

Simmons v. State, 165 Md. 155, 169 (1933).

Here, the intent of the court was clearly to convict appellant of count 38 in Case No. 1140. In explaining its rationale in finding appellant guilty of count 35, neglect of Waltermeyer, the court stated that it found appellant guilty "for the conditions that she was in, false imprisonment." The court further explained that Waltermeyer was "unable to leave the apartment" and that it found the evidence sufficient to show that "she was kept there against her will." We think it is clear that the court concluded appellant held Waltermeyer, a helpless adult, in her apartment against Waltermeyer's will. Even though the trial court failed to include the words "as to Count 38" in its summary of its findings, the intent of the trial court was clear beyond any cavil.

III. The Sufficiency of the Evidence

Appellant's next claim of error is that the evidence was "insufficient to prove that [appellant] committed the charged crimes." Specifically, appellant alleges that the victims' "testimony was simply too unreliable to support any of the convictions," that the "trial court based the convictions, such as that for identity fraud, on sheer speculation" and that, with regards to Count 48 in Case No. 1041, "the trial court plainly confused the alleged victim (Mary Lazinski) with another woman." The State responds that "the reliability of the evidence is unreviewable in a claim for insufficiency" and that appellant's claim that some of the convictions were based on "'sheer speculation' is insufficient to preserve a claim of error for appellate review." Further, the State argues that the "evidence was sufficient to

convict [appellant] of identity fraud" and "to establish that [appellant] kidnapped Lazinski." We hold that the evidence was sufficient to support the convictions.

We review for sufficiency of the evidence by determining "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). With this in mind, we do not attempt to retry the case based upon transcripts of testimony. *State v. Albrecht*, 336 Md. 475, 478 (1994). Nor do we make an assessment of the credibility of witnesses or the probative weight of particular items of evidence. *Handy v. State*, 175 Md. App. 538, 562 (2007). *See also* Maryland Rule 8-131(c)(an appellate court shall "not set aside the judgment of the trial court on the evidence unless clearly erroneous, [and must] give due regard to the opportunity of the trial court to judge the credibility of the witnesses."

A. Reliability of Witness Testimony

Appellant argues that the State's witnesses were "unable to provide critical details" and, as a result, the "witnesses' testimony was simply too unreliable to support any of the convictions." She notes that a couple of witnesses could not "remember the names of people they lived with in the apartment" and that Traore "could not identify [appellant] in the courtroom."

Appellant's victims were elderly, very vulnerable individuals. Even with those frailties, their testimony was remarkably consistent with regard to their description of their treatment

at the hands of appellant. Furthermore, much of their testimony was corroborated by the testimony of law enforcement and other witnesses. In addition, their testimony was corroborated by the paper trail left by appellant and the photos taken of the apartment. Appellant argues that Traore was unable to identify appellant in the courtroom; however, the record reveals that he corrected his initial misidentification by correctly pointing to appellant and noting that her appearance had changed since he had last seen her. The in-court identification notwithstanding, Traore had made a pre-trial identification of appellant and was seen in the apartment with appellant when the police brought him home in October 2014.

It is not our function, however, to determine the credibility of the witnesses. As required by Rule 8-131(c), we do "not set aside the judgment of the trial court on the evidence unless clearly erroneous," and recognize that the trier of fact had the opportunity to "judge the credibility of the witnesses." We assign no error here.

B. Convictions Based on 'Sheer Speculation'

Appellant argues that her conviction on Count 11 in Case No. 1140, which charged her with identity theft of Crawford, was based on "sheer speculation."[4] Appellant alleges that, while the State produced evidence showing she had used Crawford's credit card, the "State presented no evidence that [she] had actually used Mr. Crawford's *identity* to make any such purchases." (Emphasis in original). The State responds that the statute under which appellant

[4]Appellant alleges that the trial court convicted her of "a number of counts" based only upon "sheer speculation." She does not, however, identify the other counts on which she alleges error. We decline, therefore, to speculate on which counts she is seeking review.

was charged "does not require the State to prove that [appellant] 'actually used Crawford's identity' to make a purchase." The State is correct. We hold that the evidence supported a finding of guilt as to the identity theft of Crawford.

Appellant was charged with the theft of Crawford's identity in violation of Criminal Law Article § 8-301(b), which provides:

> A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value or to access health information or health care.

"Ordinarily, when a person tenders a stolen credit card to a merchant as payment for goods or services, the person so presenting implicitly represents that he or she is the cardholder." *Clark v. State*, 188 Md. App. 185, 205 (2009). Therefore, using a credit card issued to another without consent constitutes a "fraudulent use of a type of personal identifying information, *i.e.*, a credit card number, under § 8–301(b)." *Id.* at 201.

The State presented evidence that appellant had possession of Crawford's credit card and had used it to pay for a number of transactions including her phone bill. The statute does not require, as appellant argues, that the State prove she used Crawford's identity in the sense that she explicitly identified herself as Crawford to a third party. The State simply needed to prove that appellant used Crawford's credit card information without his authorization. Although Crawford was deceased at the time of trial, there was more than enough

circumstantial evidence to support a rational trier of fact's conclusion that Crawford had not given appellant permission to use his credit card information.

C. The Kidnapping Charge

Appellant alleges that the trial court's verdict as to Count 48, which charged her with kidnapping Mary Lazinski, was "clearly erroneous." Appellant asserts that, when it announced its verdict, the "trial court plainly confused the alleged victim" in Count 48 "with another woman who lived for a time in [appellant's] apartment." The State responds that there was sufficient evidence to show that appellant kidnapped Lazinski and that the fact findings of a trial judge are not subject to review for sufficiency. We hold that there was sufficient evidence presented that appellant kidnapped Lazinski.

Appellant was charged with kidnapping Lazinski in violation of Criminal Law Article § 3-502 which prohibits the use of "force or fraud" to "carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State." When announcing its verdicts on the counts relating to Lazinski, the court stated the following:

> Counts 45, deal with Ms. Lazinski. With regard to Count 45, the neglect of Ms. Lazinski will be the verdict is guilty as well as the kidnapping by fraud or deceit. Ms. Lazinski, again, was promised certain conditions the Defendant would she would [sic] be going to an assisted living home and that it was a home, not an apartment. And when she left that day with the intention to view the premises and if she didn't like it she could return. And that didn't happen. She got there and she never left until the incident was uncovered. So the Court finds that the movement was done under false pretenses or deceit and that she was forced to remain there against her will.

These findings of fact appeared to relate to the circumstances surrounding appellant's treatment of Waltermeyer, not Lazinski.

A trial court "is not required to explain its reasoning in arriving at the verdict. The verdict is permitted to speak for itself." *Chisum v. State*, 227 Md. App. 118, 139 (2015). The parameters of an appellate's court review for sufficiency of evidence where a claim of error is based upon a trial court's factual findings were explained by the *Chisum* court as follows:

> The issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not of execution.

Id. at 129-30.

Because our review for sufficiency of evidence does not concern the trial court's factual findings, we will focus our analysis on the sufficiency of the evidence itself and determine "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." *Jackson*, 443 U.S. at 318-19.

At trial, the State presented evidence that Lazinski suffered from cerebral palsy and had been admitted to the Glen Burnie Rehabilitation Center for physical therapy after suffering a fall. When Lazinksi's insurance no longer agreed to cover her stay at the center,

the center sought a new placement for her as she still needed help using the restroom and preparing meals. The center called appellant who advised that she had an "assisted living facility" that would "assist [Lazinski] with her daily needs, such as getting fed, make sure she had food and helping her to the restroom." Appellant further advised that she would be at the center the next day, the date of Lazinski's discharge, to pick her up and take her to the facility.

Appellant told Lazinski that she had a "group home" and Lazinski went with appellant. When Lazinski arrived at the apartment, she discovered that it was "no group home" and that there were no caretakers in the apartment to help her. Appellant never helped her use the bathroom and she "hardly ate for two days." Appellant told Lazinski not to open the apartment door for anyone. Lazinski only left the apartment when the police arrived at the apartment and she told them that she did not want to be there. She was then transported to Prince George's County Hospital.

The State produced sufficient evidence to establish beyond a reasonable doubt that appellant used fraud to kidnap Lazinksi. Clearly, appellant made fraudulent representations that she had an "assisted living facility" which could care for Lazinski. A rational trier of fact could infer that Lazinski based her decision to go with appellant upon these false representations. Once there, Lazinski, who suffered from significant mobility issues, was at the mercy of appellant and was physically unable to leave on her own.

III. Sentencing

Lastly, appellant alleges that she is "entitled to a new sentencing because the lower court impermissibly considered the State's unsupported allegations that she had caused injuries to the victims." The State responds that appellant did not adequately preserve this claim of error and, "while the court considered victim injury in calculating the discretionary sentencing guideline, it did not consider victim injury in imposing sentence." We hold there was no error in sentencing.

Prior to sentencing, a pre-sentence investigation was completed by the Maryland Department of Public Safety and Correctional Services. Sentencing guidelines were calculated as part of the investigation. The State objected to the calculation, because no points had been assigned for victim injury.[5] They argued that injury points should be assessed for each victim because "[s]ome of the victims [had] physical injuries, rashes, bed bugs," and "[a]ll of them were starving" and "in need of medical care." Counsel for appellant responded that appellant "shouldn't be held accountable for that," because the victims' "complicated medical history" meant that they "were injured before they came to [her]." The court agreed with the State and prescribed a point for non-permanent injury for the abuse/neglect of a vulnerable adult on Crawford, Traore, Waterholter, and Waltermeyer. The court also agreed

[5] The State further argued that the DPSCS failed: (1) to identify separate criminal events and victims; and (2) to account for the recommended sentences for each criminal event per victim.

that the offenses constituted separate criminal events. As a result of the points assessed for victim vulnerability, the top of the guidelines range was modified from twenty-three years and three months, to twenty-seven years and three months.

Arguing that the "guidelines [did] not properly account for what the [appellant] did," the State sought a sentence of fifty years of executed time, with an additional fifty years suspended. Appellant argued for a sentence of ten years of executed time. Prior to issuing its sentence, the court made lengthy comments regarding the facts of this case, noting that the victims had been held hostage, starved, abused, threatened, and "whatever other valuables they had, their income was taken away from them." The court then sentenced appellant to twenty four years and 341 days of active incarceration.

"The sentencing court has 'virtually boundless discretion' in imposing a sentence. *Reiger v. State*, 170 Md.App. 693, 697 (2006) (quoting *State v. Dopkowski*, 325 Md. 671, 679 (1992). A sentence should be "based upon the facts and circumstances of the crime committed and the background of the defendant, including his or her reputation, prior offenses, health, habits, mental and moral propensities, and social background." *Poe v. State*, 341 Md. 523, 532 (1996) (internal citations omitted). There are only three grounds for appellate review of sentences: "(1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by ill-will, prejudice or other impermissible considerations; and (3) whether the sentence is within statutory limits." *Gary v. State*, 341 Md. 513, 516 (1996). A criminal

defendant must note a timely objection in the trial court in order to preserve for appeal an allegation of impermissible considerations at sentencing. *Chaney v. State*, 397 Md. 460, 466 (2007). It is not "an impermissible consideration, within the contemplation of our cases, for a trial judge not to apply the Guidelines, or to apply them improperly." *Teasley v. State*, 298 Md. 364, 370-71 (1984). The sentencing "guidelines are not mandatory." *Id.* at 367. "Judges, therefore, may sentence outside the range suggested by the Guidelines, either more or less severely." *Id.*

The State contends that appellant did not preserve her claim of error as to sentencing considerations because "she did not object when the court articulated the reasons for imposing its sentence." The State's point is well-taken but appellant did object to the assessment of points for the victims' injuries at the time the guidelines were calculated. In our view, this was sufficient to preserve the issue.

Appellant alleges that the "lower court impermissibly considered the State's unsupported allegations that she had caused injuries to the victims;" however, there is no evidence in the record that the court based its sentence on the injuries to the victims. That the court sentenced appellant to incarceration for one year above the upper limited of the unmodified guidelines, alone, does not show that its sentence was motivated by the presence of victim injuries. In fact, the trial judge indicated that at the conclusion of the trial and, prior to considering the issue of victim injury, he had considered sentencing appellant to an even

greater sentence. In explaining its rationale in fashioning its sentence, the court remarked at length on the severe facts of this case, but did not mention any of the injuries to the victims.

Nevertheless, there was sufficient evidence that appellant caused or exacerbated the victims' injuries; therefore, they would have been proper for the court to consider in fashioning its sentence. Appellant took each victim from a hospital, shelter, or rehabilitation center in which they were receiving care. Traore had come from a hospital where he had had seven surgeries and needed assistance caring for a leg wound. Appellant never took care of his bandages or his leg wound. He was found wandering the streets on a cold and rainy night, the bandage covering his wound "soaked with pus." A reasonable inference could be drawn that the wound had been exacerbated by appellant's neglect. Waltermeyer was found in the apartment with "large sores and a rash on her chest area," and sitting in her own urine. At sentencing Waltermeyer advised that she did not have those conditions prior to coming into appellant's apartment and that she acquired bed bugs during her stay in the apartment. A "very very thin" Waterholter was found in the apartment, "shaking, trembling," and appearing unhealthy and unsure about what was going on. In a memorandum to the court in anticipation of sentencing, the State advised that Crawford, who was confined to a wheelchair, was removed from the apartment by appellant and "dumped on the street in freezing weather near the Veterans Hospital." One of his toes was amputated soon thereafter.

It is reasonable to infer that appellant's neglect of these vulnerable people exacerbated their existing conditions. Had the court considered the victims' injuries, it would not have erred.

THE JUDGMENT OF CONVICTION FOR COUNT 53 (IDENTITY FRAUD) IN CASE NO. CT 141017X IS REVERSED. ALL OTHER JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY ARE AFFIRMED. COSTS ARE TO BE PAID AS FOLLOWS: PRINCE GEORGE'S COUNTY: 25%; APPELLANT: 75%.