UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2692

September Term, 2015

ZOEY RAINES

v.

STATE OF MARYLAND

Arthur,
Reed,
Alpert, Paul, E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: November 16, 2016

Zoey Raines, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of fourth-degree burglary and two counts of trespass by invasion of privacy.[1] Appellant raises the following question on appeal: Whether the trial court erred in refusing to instruct the jury on mistake of fact and voluntary intoxication? For the following reasons, we shall affirm the judgments.

FACTS

The State's theory of prosecution was that on the early evening of July 17, 2015, appellant walked onto the property and peered into the windows of two houses whose backyards adjoined. The homeowners and responding police officers testified for the State. The theory of defense was that appellant was under the influence of alcohol, and he had no intent to enter the houses. The defense presented no witnesses. Viewing the evidence in the light most favorable to the prevailing party, the State, the following was established.

Julia McCarty testified that around 4:30 p.m. on July 17, 2015, she was driving from work to her home at 13505 Stockbridge Court in Silver Spring, Maryland. As she turned onto her cul de sac, she saw a man she did not know but later identified as appellant, walking down her street. She continued to her house and, using her remote controlled garage door opener, opened her garage door, drove her car into her garage and parked. She

[1] The jury acquitted appellant of two counts of third-degree burglary and one count of fourth-degree burglary.

The court sentenced appellant on the fourth-degree burglary conviction to 18 months of imprisonment, suspended 180 days and granted 180 days credit for time served, and concurrent 90 day sentences for each of the trespass convictions. Appellant was ordered to serve 18 months of supervised probation upon his release from prison.

retrieved some items from her car and, as she began closing the garage door, she saw appellant standing at the top of the driveway next to her garage. According to McCarty:

> I turned to him and said, hello. I had never seen him before. I did not know why he was there. And he mumbled something that was unclear and I, I kind of looked at him and then he repeated or said, can I cut through the backyard? And I said, sure, that's, that's fine, and I walked, like closed my car, walked, walked to my door to enter the house in the garage and he continued to stand there. . . .[A]s he continued to stand there, he had one hand in his private region and his belt was unbuckled. And I told him, I was, I'm going to close the garage now and he continued to stand there and stood there until the garage was fully closed.

Appellant was swaying slightly, had a "very glossed, glazed look[,]" and a smile that made her feel "very uncomfortable." She added that she did not know if he was intoxicated, high, or "cognitively impacted."

McCarty entered her house, closed the door, and locked it. She went into the kitchen and looked out the back window to see if appellant was cutting across her backyard. She did not see him, but a couple of seconds later she heard rapping at her back door and saw him peering in with his hands pressed up against the window. She went upstairs and called 911. While upstairs and looking at the front door, she heard and then saw appellant "pulling and a pushing" the door while alternately peering into her house with his hands pressed against the glass.

Gail and her husband Michael Goodman lived at 1829 Middlebridge Drive. Their backyard abuts part of McCarty's backyard. On the late afternoon of July 17, 2015, Gail was sitting in the family room facing a window that looked out into the backyard when she saw a man she did not know press his hands up against the window and peer in, looking to

the right and left. She called for her husband to come downstairs. She next saw the man peering in the front door sidelight window.

Michael Goodman testified that when he came downstairs he saw a man peering through the sidelight window of their front door. Michael raised his hands in a manner to ask, "can I help you?" According to Michael, appellant responded unintelligibly and the only word he understood was the word "disposal." Michael noticed that the man's eyes were red and glassy, and he appeared "out of it". Michael repeated, "[D]isposal?" and appellant nodded his head. Thinking the man meant he had come to fix their garbage disposal, Michael replied, "[W]e're good, we're all set[.]" The man said, "[O]kay, sort of tapped the window, and walked away." Michael called 911. Gail saw the man walk from their house to their neighbor's house at 1833 Middlebridge Drive. At one point, the man, who seemed "a little unsteady[,]" lost his footing. Gail saw that his belt was held on by one belt loop and the rest of the belt hung straight down to the ground.

Detective Sergeant Paul Reese, an 18-year police veteran with the Montgomery County Police Department, testified that he responded to a call for suspicious activity and drove his unmarked police car to the described residential area. Upon parking his car and walking between two houses, he saw a man, later identified as appellant standing on the back porch of 1833 Middlebridge Drive looking in the window. Appellant's hands were in his pants, which were almost to his knees, but his underwear was on. The detective approached appellant, identified himself as a police officer, and told him to get on the ground. In response, appellant began to run away but fell down the porch steps, and crawled toward the bushes. Appellant then got up and ran into the nearby woods. As he

ran, appellant kept trying to pull his pants up and screaming for the officer to "leave me alone, leave me alone." Eventually the detective tackled appellant to the ground and after a struggle handcuffed him. The detective smelled the "faint" odor of alcohol coming from him. When the detective asked if he had smoked anything that day, appellant said he had not. The detective testified that while he waited for backup, appellant:

> kept talking about a girl that he was going to visit. I kept asking him where this girl was. He couldn't tell me where that person lived. I was asking him like where are you coming from, why are you in this neighborhood. He said I'm going to visit my girl, wouldn't tell me who that girl was, didn't tell me what the address was, couldn't find a phone number, no basic information at that point.

The detective characterized appellant as "definitely out of it[.]"

Officer Sarah Reichert of the Montgomery Police Department testified that when she arrived to assist, she found appellant handcuffed with his pants down and his belt partially off. When she placed him in the police car, appellant was sweating and the officer smelled a "strong odor" of alcohol. When she drove him to the police station, appellant constantly spoke, saying that he "didn't do anything" and "was drunk and high and woke up and he was arrested." During a search of the perimeter of the houses, the police found a pair of yellow work gloves in the Goodman's yard that did not belong to them and had not been there earlier in the day.

DISCUSSION

Appellant argues that the trial court erred in not giving his requested jury instructions on mistake of fact and voluntary intoxication. We are persuaded no error occurred. We shall address each argument in turn.

Jury Instruction Law

Md. Rule 4-325(c), governing jury instructions, 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." Maryland courts have held that when a party requests a particular jury instruction the trial court must make three determinations to satisfy the Rule: (1) whether the requested instruction is a correct statement of the law; (2) whether it is applicable under the facts and circumstances of the case; and (3) whether it is fairly covered in the instructions actually given. *Mack v. State*, 300 Md. 583, 592 (1984). It is the second determination that is the focus here, for an accused "is entitled to have the jury instructed on any theory of the defense that is fairly supported by the evidence." *Fleming v. State*, 373 Md. 426, 432 (2003)(citation omitted).

Trial courts have broad discretion in determining whether to give instructions requested by the parties. *Roach v. State*, 358 Md. 418, 428-29 (2000)(citation omitted). In determining whether a trial court abused its discretion in declining to give a requested instruction, our review is "limited to determining whether the criminal defendant produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Marquardt v. State*, 164 Md. App. 95, 131 (quotation marks and citation omitted), *cert. denied*, 390 Md. 91 (2005). *See also Malik v. State*, 152 Md. App. 305, 333 (our task is to determine whether the defendant produced "some evidence" to support the requested jury instruction), *cert. denied*, 378 Md. 618 (2003). The requirement of "some evidence" has been explained as:

> not strictured by the test of a specific standard. It calls for no more than what it says – "some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond a reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant.

General v. State, 367 Md. 475, 487 n.8 (2002)(quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)).

Elements of Fourth-Degree Burglary and Trespass

Appellant was convicted of one count of fourth-degree burglary and two counts of trespass by invasion of privacy. The crime of burglary in the fourth-degree is codified at Md. Code Ann., Crim. Law Art., § 6-205, which lists four subvarieties of prohibited behavior.

> (a) *Prohibited -- Breaking and entering dwelling.* -- A person may not break and enter the dwelling of another.
>
> (b) *Prohibited -- Breaking and entering storehouse.* -- A person may not break and enter the storehouse of another.
>
> (c) *Prohibited -- Being in or on dwelling, storehouse, or environs.* -- A person, with the intent to commit theft, may not be in or on: (1) the dwelling or storehouse of another; or (2) a yard, garden, or other area belonging to the dwelling or storehouse of another.
>
> (d) *Prohibited -- Possession of burglar's tool.* -- A person may not possess a burglar's tool with the intent to use or allow the use of the burglar's tool in the commission of a violation of this subtitle.

"The four crimes grouped under the umbrella of fourth-degree burglary neatly divide into two sets of two crimes each." *Dabney v. State*, 159 Md. App. 225, 236 (2004). The first set, (a) and (b), require only a general intent while the last set, (c) and (d), demand a specific intent, an intent to either "commit theft" or commit "any violation of this subtitle." *Id*. at

237. Appellant was only charged and convicted of subvariety (a) of fourth-degree burglary – a general intent crime.

Appellant was also convicted of trespass under Md. Code Ann., Crim. Law § 6-408 which states that "A person may not enter on the property of another for the purpose of invading the privacy of an occupant of a building or enclosure located on the property by looking into a window, door, or other opening." In *Warfield v. State*, 315 Md. 474 (1989), the Court of Appeals examined at length the mens rea for criminal trespass. The *Warfield* Court stated that the crime of criminal trespass "proscribe[s] the intrusion upon the property of another with the general intent to break and enter but without the specific intent to commit a crime therein. This is the hallmark of a criminal trespass." 315 Md. at 498. The *Warfield* Court added:

> The common requirement of criminal trespass offenses is that the actor be aware of the fact that he is making an unwarranted intrusion.
>
> * * *
>
> The knowledge requirement is designed primarily to exclude from criminal liability both the inadvertent trespasser and the trespasser who believes that he has received an express or implied permission to enter or remain.

Id. at 498-99 (quotation marks and citation omitted). *See also In re Jason Allen D.*, 127 Md. App. 456, 479 (1999)(the offense of misdemeanor trespass is a general intent crime), *overruled on other grounds, In re Antoine M.*, 394 Md. 491 (2006).

Mistake of Fact Instruction

Appellant argues, as he did below, that he was entitled to a mistake of fact jury instruction based on his statement to the detective that he was looking for "a girl."

According to appellant, he was "presumably welcome" at the girl's house that he was looking for, and so "his conduct would thus be afforded an innocent explanation." The State argues that the trial court properly declined to give the instruction because there was insufficient evidence that appellant "honestly and reasonably believed that the girl he was looking for resided in the multiple homes in which he trespassed."

"[M]istake of fact is a recognized common law defense to certain crimes." *General*, 367 Md. at 483–84 (footnote and citations omitted). A mistake of fact "exists when the actor does not know what the actual facts are or believes them to be other than as they are. In essence, a mistake of fact is a defense when it negates the existence of the mental state essential to the crime charged." *Id*. at 484 (citing Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 5.1 (2d ed.1986))(footnote omitted). A mistake of fact instruction has the following elements:

> You have heard evidence that the defendant's actions were based on a mistake of fact. Mistake of fact is a defense. You are required to find the defendant not guilty if:
>
> (1) the defendant actually believed (alleged mistake);
>
> (2) the defendant's belief and actions were reasonable under the circumstances; and
>
> (3) the defendant did not intend to commit the crime of (crime) and the defendant's conduct would not have amounted to the crime of (crime) if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant's conduct would not have been criminal][defendant would have the defense of (defense)].
>
> In order to convict the defendant, the State must prove beyond a reasonable doubt that at least one of the three factors was absent.

Md. Pattern Jury Instructions (2nd Ed., 2013 supp.) – Cr. 5:06.

Here, appellant told the detective, in an apparent attempt to explain his actions, that he was "looking" for his girl. Even if this were true, appellant's actions still constituted fourth-degree burglary and criminal trespass. Appellant's mistaken belief was not that he believed that "his girl" lived at any of the three houses, which would be a defense to the crimes because it would negate the requirement that he knew that property and/or houses belonged to someone he did not know and did not have permission to enter, but that he was "looking" for his girl. Appellant's conduct did not show a mistaken belief that his girlfriend lived at any of the houses. Because appellant has failed to meet the third factor for mistake of fact, that instruction was not warranted in this case.

Voluntary Intoxication Instruction

Appellant also argues that the trial court erred in declining to give his requested instruction on voluntary intoxication, arguing that there was more than "some" evidence that he was under the influence of alcohol or drugs. The State responds that the instruction was not warranted because appellant's level of intoxication was not high enough. We need not reach the merits of appellant's argument, for a voluntary intoxication instruction applies only to specific intent crimes, and appellant was only convicted of general intent crimes. Accordingly, any error was harmless.

"The general rule is that voluntary drunkenness is not a defense to crime." *Hook v. State*, 315 Md. 25, 28 (1989)(citations omitted). It is a defense to specific intent crimes, but the degree of intoxication is high. *Bazzle v. State*, 426 Md. 541, 553-55 (2012) (citations omitted). This is because "mere intoxication is insufficient to negate a specific intent[.]" *Id*. at 553 (citation omitted).

> Evidence of drunkenness which falls short of a proven incapacity in the accused to form the intent necessary to constitute the crime merely establishes that the mind was affected by drink so that he more readily gave way to some violent passion and does not rebut the presumption that a man intends the natural consequences of his act.

Hook, 315 Md.at 31 n.9 (quotation marks and citations omitted). *See also Bazzle*, 426 Md. at 553-54 and cases cited therein.

As stated above, the crime of fourth-degree burglary, subvariety (a), and trespass are general intent crimes. Because the defense of voluntary intoxication applies only to specific intent crimes, any error in not giving an instruction on voluntary intoxication was harmless.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.