UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2738

September Term, 2013

LAMONT S. BROWN

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Meredith,
Berger,

JJ.

Opinion by Berger, J.

Filed: February 11, 2016

Following a jury trial, Lamont Stephen Brown ("Brown"), appellant, was convicted of second-degree assault in the Circuit Court for Prince George's County. On appeal, Brown raises a single issue for our review, which we have rephrased as follows:

> Whether the circuit court erred by refusing to admit an un-filed juvenile charging document relating to a third-party who was allegedly involved in the same assault as Brown.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

James Sandy ("Sandy") is a homeowner who resided with his wife and three children two doors down from Crossland High School, where Sandy's wife was a teacher. Sandy was bothered by students on their way to Crossland High School. Students gambled and smoked marijuana on Sandy's property. Sandy and other neighbors had complained to school officials about trespassing by Crossland students.

Sandy often checked his yard in the mornings to see if it was safe for his two middle school-aged children to go outside to catch the bus. On the morning of April 20, 2012, Sandy saw a "bunch of students" standing on his property "smoking pot." Sandy went outside and asked the students to leave. Sandy identified two of the students he asked to leave as Brown and his codefendant at trial, Delonte T. Norwood ("Norwood").

Thereafter, a group of between fifteen and twenty young people, including Brown, attacked Sandy. Sandy testified that Norwood was the first to punch him. After Sandy fell to the ground, however, the group of people, including Brown and Norwood, "started stomping on [him]" and "kicking [him]." At trial, multiple witnesses identified Brown and

Norwood, who along with others, attacked Sandy. Sandy's injuries were severe enough to require surgery. Sandy's explained that, due to the assault, he now "ha[s] a metal plate on my left hand because the bone was slashed open, and [he] ha[s] six screws and a metal plate in [his] left hand."

Brown and Norwood were tried together before a jury in the Circuit Court for Prince George's County. The jury heard testimony from Officer George Ross of the Prince George's County Police Department. He was assigned to Crossland High School as a school resource officer at the time of the assault. Officer Ross investigated Sandy's assault, located various students allegedly involved in the assault, and prepared charging documents for the individuals responsible for the assault.

During Officer Ross's testimony, Norwood's attorney sought to introduce a draft application for a statement of charges against J.A.S., a juvenile whom Brown and Norwood claimed started the attack on Sandy.[1] Neither the draft application nor any actual statement of charges was ever actually filed against J.A.S. Nonetheless, Norwood's attorney argued that the draft application was relevant to "identification of the suspect" and "background."

Brown was ultimately found guilty of second-degree assault. Brown was sentenced to five years' incarceration, with all but eighteen months suspended, followed by three years' probation. This timely appeal followed.

[1] J.A.S. was an adult by the time of the trial but was a juvenile at the time of the incident. Out of respect for his privacy interests, we shall not refer to J.A.S. by name.

DISCUSSION

Although Brown never joined in his codefendant Norwood's efforts to admit the draft charging document, he urges this Court to conclude that the issue is preserved because Norwood's effort to admit the document served to preserve the issue for both codefendants. As we shall explain, we disagree with Brown's position.

When Norwood's attorney attempted to admit the draft charging document, Brown's attorney was silent. The following colloquy occurred:

> [PROSECUTOR]: I believe they're getting into some juvenile records, which I believe are confidential under Judicial Proceedings 3827.[2]
>
> THE COURT: What's the relevance?
>
> [NORWOOD'S COUNSEL]: That [J.A.S.] was the assailant and he was never--
>
> THE COURT: There was more than one assailant. Is [J.A.S.] a juvenile?
>
> [NORWOOD'S COUNSEL]: No.
>
> [PROSECUTOR]: He was 17.9 at the time of the offense.
>
> THE COURT: Sustained. Sustained.
>
> [NORWOOD'S COUNSEL]: Your Honor, there's an arrest--
>
> THE COURT: I said sustained. He's a juvenile and the whole--

[2] It appears that the prosecutor was referring to Md. Code (1974, 2013 Repl. Vol.), § 3-8A-27 of the Courts and Judicial Proceedings Article ("CJP").

> [NORWOOD'S COUNSEL]: Your Honor, this goes to identification of the suspect. This goes to the facts--
>
> THE COURT: You can continue to interrupt me, it's still sustained. Sit back down.
>
> [NORWOOD'S COUNSEL]: All right, Your Honor. Thank you.

Several moments later, the parties returned to the bench, and Norwood's attorney again raised the charging document issue. Again, Brown's attorney remained silent.

> [NORWOOD'S COUNSEL]: Can I make a record at least what this document was then that you sustained my objection on?
>
> THE COURT: After the fact, sure. Go right ahead.
>
> [NORWOOD'S COUNSEL]: Thank you, Your Honor.
>
> I just want to note that the objection previously that I--that was for an Application for Statement of Charges, the named defendant listed is [J.A.S.]. It's marked draft at the top and it contains a statement that--
>
> THE COURT: It's a draft statement of charges?
>
> [NORWOOD'S COUNSEL]: That's correct, Your Honor.
>
> [PROSECUTOR]: Still going to object.
>
> THE COURT: He can mark it. The objection it's not--are you moving to admit it?
>
> [NORWOOD'S COUNSEL]: No, Your Honor.
>
> THE COURT: Well, then it can't be the only--
>
> [NORWOOD'S COUNSEL]: Okay, Your Honor. That's fine.

THE COURT: If you move, I'm not--

[NORWOOD'S COUNSEL]: It's been sustained. That's fine.

THE COURT: Yeah, but--well, it's your record. That's fine.

[NORWOOD'S COUNSEL]: Thank you, Your Honor.

It is the general rule in the State of Maryland that each codefendant must independently raise an issue in order for that issue to be preserved for appellate review, as we have explained:

> In general, [u]nder Maryland law, in cases involving multiple defendants each defendant must lodge his own objection in order to preserve it for appellate review and may not rely, for preservation purposes, on the mere fact that a co-defendant objected. One defendant, of course, may expressly join in an objection made by a co-defendant but he must expressly do so. It is not implicit.

Williams v. State, 216 Md. App. 235, 254, *cert. denied*, 438 Md. 741 (2014).

Brown asserts that, pursuant to *Bundy v. State*, 334 Md. 131 (1994), the charging document issue is preserved as to both defendants. In *Bundy*, the Court of Appeals set forth an exception to the general rule that a codefendant's objection is not sufficient to preserve an appellate issue for a party who does not object. 334 Md. at 145. *Bundy* involved two defendants who were tried together for theft. The trial court incorrectly ruled that the State was entitled to eight, rather than four, peremptory challenges.[3] On appeal, Bundy argued

[3] *See* Md. Rule 4-313(a)(1) ("Except as otherwise provided by this section, each party is permitted four peremptory challenges.").

that the issue was preserved as to him although only his codefendant had objected. The Court of Appeals agreed, holding that, based upon the unique circumstances of the case, the issue was preserved for the non-objecting party. *Id.* at 146-47.

Before reaching its conclusion in *Bundy*, the Court of Appeals looked to its previous opinion in *Osburn v. State*, 301 Md. 250 (1984), as well as this Court's opinion in *Ezenwa v. State*, 82 Md. App. 489 (1990). In *Osburn*, the Court of Appeals held that when one codefendant objected to the prosecutor's closing argument, while the other codefendant was silent with respect to the allegedly improper argument, the issue was preserved only for the objecting party. 301 Md. at 253. In *Ezenwa*, we expanded upon *Osburn* and held that where only one codefendant objected to testimony, two other codefendants could not raise the issue on appeal because they failed to individually object. 82 Md. App. at 514. More recently, we have reaffirmed the general rule that each codefendant is required to lodge his or her own objection in order to preserve the issue for appeal. *See, e.g., Williams, supra*, 216 Md. App. at 254 ("[I]n cases involving multiple defendants each defendant must lodge his own objection in order to preserve it for appellate review and may not rely, for preservation purposes, on the mere fact that a co-defendant objected . . . .").

In *Bundy*, the Court of Appeals quoted from Judge Joseph Murphy's handbook on Maryland evidence law, in which Judge Murphy commented that he believed the *Ezenwa* holding was inappropriately harsh:

> "This rule should be relaxed, but do not expect that it will be. Unless the identity and/or status of the objecting party is a

> factor in the trial judge's decision to overrule the objection, any counsel's objection really should be allowed to preserve the issue, at least for all similarly situated parties. On appeal, of course, everyone should be stuck with whatever reasons have been stated in support of any such objection. *Right now, however, unless the trial judge is kind enough to state for the record which parties will receive the benefit of another party's request for relief,* you will always have to protect the record yourself."

Bundy, *supra*, 334 Md. at 146 (quoting Joseph F. Murphy, Jr., *Maryland Evidence Handbook* § 102(C), at 13 (2d ed. 1993)) (emphasis added in *Bundy*). Applying *Osburn* and *Ezenwa* to the issue in *Bundy*, the Court of Appeals observed that *Bundy* presented the unusual circumstances in which "the trial judge was 'kind enough' to acknowledge that the codefendant's objection also benefit[t]ed Bundy." 334 Md. at 146. The Court explained:

> When the codefendant exclaimed, "Your Honor, I'm sorry. I thought the State had exhausted her strikes," the judge explicitly addressed both of the parties in overruling the objection. He immediately stated, "You *each* get four. The State gets eight." (Emphasis added). Thus, the manner in which the trial judge summarily overruled the objection in this case adequately reflects that he assumed the objection was made on behalf of both defendants.

Id.

Unlike *Bundy*, the instant appeal does not present a situation in which a trial judge indicated that a ruling applied to both codefendants. Brown points to nothing in the record which suggests that the trial court acknowledged that the objection was made on behalf of both defendants. The record reflects that there is none. Brown argues that "if counsel for Mr. Brown had moved for admission of the [J.A.S.] application" after the court had already

ruled against Norwood, the circuit court "would have thought [Brown's attorney] an idiot." Although Brown may be correct that the court may have found it repetitive to address the charging document issue again, the onus is on each party to preserve the record. Indeed, as discussed *supra*, Norwood's attorney raised the issue for a second time in order to make a record. Brown's attorney remained silent. Because Brown has not demonstrated that his appellate claim falls within the *Bundy* exception, the general rule of *Osburn*, *Ezenwa*, and *Williams* applies. Accordingly, we hold that because Brown's attorney made no effort to admit the challenged document, the issue is not preserved for appeal.

Furthermore, assuming *arguendo* that this issue was preserved, we hold that the trial court did not abuse its discretion by declining to admit the charging document. With limited exceptions inapplicable to the present case, a "police record concerning a child is confidential and . . . [i]ts contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown." CJP § 3-8A-27(a)(1). Pursuant to this statute, the draft charging document was presumptively confidential. In order to overcome the presumption of confidentiality, the party seeking disclosure must persuade a court that good cause exists. *See Samie v. State*, 181 Md. App. 59, 67 (2008) ("Disclosure is permitted when the need for [the record] outweighs the privacy interest of [the party who has a privacy interest in the record]."") (quotation and citation omitted) (bracketed text in original).

Brown asserts that the trial court misapplied CJP § 3-8A-27(a)(1) by failing to appreciate that the court had discretion to admit a juvenile police record if "good cause" was

shown. We disagree. Indeed, it is beyond cavil that judges are presumed to know the applicable law, as we have explained:

> *The exercise of a judge's discretion is presumed to be correct*, he is presumed to know the law, and is presumed to have performed his duties properly. Absent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, *the presumption is sufficient for us to find no abuse of discretion*. Additionally, *a trial judge's failure to state each and every consideration or factor* in a particular applicable standard *does not*, absent more, *constitute an abuse of discretion*, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.

Payton-Henderson v. Evans, 180 Md. App. 267, 286 (2008) (internal citation and quotation omitted) (emphasis in original).

In our view, the record does not reflect a misapprehension of the law by the trial judge. Rather, the record reflects Norwood's failure to proffer any compelling reason to believe that good cause existed to justify disclosure of the draft charging document. The prosecutor objected on the basis of CJP § 3-8A-27, but when the trial court asked counsel to explain the relevance of the draft application, counsel simply answered that it was relevant to "background" and "identification of the suspect." The trial court responded that the draft charging document had little relevance upon the identification of Norwood, given that Sandy was attacked by a group of fifteen to twenty individuals. Even after counsel raised the issue moments later to "make a record," counsel merely described the contents of the draft application. Critically, counsel offered no argument as to how the need for the record

outweighed J.A.S.'s privacy interests. Accordingly, we hold that the circuit court did not abuse its discretion by declining to admit the draft charging document.

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