UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0483

September Term, 2015

ANDREA ELLEN LLOYD

v.

STATE OF MARYLAND

Wright,
Berger,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: May 9, 2017

On February 2, 2015, the Circuit Court for Cecil County convicted appellant, Andrea Ellen Lloyd, of child abuse, three counts of second degree assault, reckless endangerment, and rendering a child in need of assistance. After merging the assault, and reckless endangerment counts into the child abuse count, the court sentenced appellant to fourteen years of imprisonment, with all but ten years suspended. Appellant was ordered to complete three years of supervised probation upon release.

Appellant presents the following questions for our review:

I. Did the trial court err in finding that the State had sufficiently authenticated a cellular phone video recording prior to admitting it into evidence?

II. Did the trial court err by permitting the detective to narrate what [she] saw on the cellular video?

III. Was Appellant convicted and sentenced illegally for a crime that was not charged in the indictment?

IV. Did the trial court err by exceeding its role during the trial and acting as a second prosecutor?

V. Was the evidence legally insufficient to support Appellant's conviction for rendering a child in need of assistance?

For the reasons discussed below, we affirm.

BACKGROUND

On September 5, 2014, Detective Lindsay Ziegenfuss, of the Elkton Police Department, received a referral from the Cecil County Child Protective Services ("CPS") regarding a child residing with Debbie Dawkins at 300 Hollingsworth Manor in Elkton. The child, eight year old C.W., was living with Dawkins as a result of a Delaware Child Protective

Services placement. Appellant was a childhood friend of Dawkins and lived in close proximity to Dawkins' home. Appellant frequently visited Dawkins home, and met C.W. during these visits.

On August 3, 2014, appellant, Dawkins, Michelle Williams, and Josh Olah[1] were at Dawkins home with C.W. While at the home, Williams, a relative of C.W., filmed an encounter Dawkins, Williams, and appellant had with C.W. In the video, which Dawkins provided to CPS, C.W. is being held down on a couch, and Dawkins is heard saying, "come on, [C.W.], show your ugly face." Williams's voice is also heard in the video, and her arm is shown holding down C.W.'s arm. Appellant's hand is shown around C.W.'s neck. C.W. is struggling, visibly upset, and crying.

C.W. testified that when she lived with Dawkins and would get in trouble, Dawkins, Williams, and appellant would hit her. She testified that there had been one occasion when she was left in appellant's care while Dawkins was away. She testified that once, when she had been standing by the corner, appellant had "grabbed [her] up" and touched her neck. While appellant was hurting her, she couldn't breathe and her toes were up on the wall. She also testified that on another occasion she had been on the couch with appellant, and appellant had "pulled [her] up." She testified that Williams was in close proximity to her on this occasion. She testified that appellant's hands had left a mark around her neck. C.W. further testified that another time she was hit by Dawkins and appellant while she was taking a shower.

[1] Dawkins, Williams, and Olah were also charged in connection with this case. **[Trial Transcript, pp. 54-55]**

DISCUSSION

I. Admission of Cell Phone Video

At trial, the State admitted the video of the assault on C.W. through the testimony of Detective Ziegenfuss. Appellant argues that "the trial court erred in admitting the cellular phone video" absent proper authentication." She avers that "when the Court received the video into evidence, there was no evidence 'through the testimony of a witness with personal knowledge,' to verify that the video was a fair, accurate, and complete recording of the day, nor was there any testimony concerning the process or system of the recording itself."

The State responds that the "trial court acted within its discretion in admitting [the video], and any error was harmless." The State argues that "[u]nder the circumstances, there was 'some evidence' that the video was what the State claimed it to be – a video recording of Williams and [appellant] abusing C.W." They argue that Detective Ziegenfuss "saw the place where the video was taken and spoke to the person who made the video, who admitted to making the video." Additionally, the State argues that "the contents of the video itself, corroborating C.W.'s testimony, authenticated the video." Finally, the State argues that any error was harmless as appellant "herself acknowledged that the video accurately reflected what transpired during the incident." We hold that the video was properly authenticated and, therefore, the court committed no error in its admission.

"The admissibility of evidence ordinarily is left to the sound discretion of the trial court." *Moreland v. State*, 207 Md. App. 563, 568 (2012) (citing Maryland Rule 5-104(a)). Upon review, we "will not disturb a trial court's evidentiary ruling unless 'the evidence is

plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.'" *Id.* at 568-69 (internal quotations omitted) (citing *Decker v. State*, 408 Md. 631, 649 (2009)). Rule 5-901(a) controls the authentication of evidence and provides as follows:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Supporting evidence may include "[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be." Rule 5-901(b)(4). "Videotapes are generally admissible in evidence on the same basis as motion picture films and subject to the same general rules applicable to photographic evidence." *Department of Public Safety and Correctional Services v. Cole*, 342 Md. 12, 20 (1996). "Courts therefore require authentication of photographs, movies, or videotapes as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine." *Washington v. State*, 406 Md. 642, 651-52 (2008). "Typically, photographs are admissible to illustrate the testimony of a witness when that witness testifies from first-hand knowledge that the photograph fairly and accurately represents the scene or object it purports to depict as it existed at the relevant time." *Cole*, 342 Md. at 20-21.

In the instant case, Detective Ziegenfuss testified that she visited Dawkins' home and recognized the home from the videotape of the assault. Detective Ziegenfuss further testified that she recognized the couch and living room appearing in the video of the assault.

She took photographs of the home, which were admitted at trial. Further, she spoke to both Dawkins and Williams about the video and Williams admitted to taking the video. Detective Ziegenfuss testified that she was familiar with Dawkins' and Williams' voices through her interviews with them, and that she recognized their voices on the videotape. Detective Ziegenfuss also took photographs of appellant and Williams, and of the distinctive tattoos appearing on their hands and forearms. Detective Ziegenfuss then identified each woman in the video and pointed out their distinctive tattoos. Finally, C.W. testified that she was on the couch when appellant had grabbed her neck, and that Williams had been in close proximity during the assault. The video, thus, corroborated C.W.'s testimony regarding this assault. As such, the evidence was sufficient to support a finding that the video was, what the State claimed it to be, a video of appellant abusing C.W.

II. Narration of Cell Phone Video

Appellant next argues that the "trial judge erred by permitting the Detective to narrate what [she] saw on the cellular phone video." She argues that the Detective's narration of the videotape violated Rule 5-602 which states that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." She further argues that the Detective's testimony was "not relevant to any contested issue in the case." The State responds that the "court was within its discretion in allowing the testimony, and any error was harmless beyond a reasonable doubt." We hold that the Detective's testimony was relevant to the contested issues in the case and that the court did not abuse its discretion in allowing the testimony.

The State played the videotape at trial during Detective Zigenfuss' testimony, and asked the Detective to narrate portions of the tape. She was asked to identify the voices and persons appearing in the videotape. Much of the video consisted of close shots of C.W. during the assault, and of two sets of hands, on C.W.'s face, neck, and body. During her testimony, Detective Zigenfuss identified the hands as belonging to appellant and Williams by identifying the distinctive tattoos each had on her hands and arms. After the video played, the State then admitted still photographs taken from the video and asked Detective Zigenfuss questions regarding who appeared in the photographs. Again, Zigenfuss identified appellant and Williams in the video, largely due to the distinct tattoos which appeared on each woman's hands.

Ordinarily, we review rulings on the admissibility of evidence using an abuse of discretion standard. *Gordon v. State*, 431 Md. 527, 533 (2013). Rule 5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In *Moreland supra*, we held that a non-eyewitness police officer may testify "'regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury.'" 207 Md. App. at 572 (quoting *Robinson v. Colorado*, 927 P.2d 381, 382 (Colo 1996).

In the instant case, Detective Ziegenfuss was familiar with appellant, Dawkins, and Williams. She testified that she interviewed Dawkins and Williams and recognized both of their voices. Neither Dawkins nor Williams were present at trial. Detective Ziegenfuss

further testified that she observed and was able to identify distinctive tattoos on the arms and hands of Williams and appellant. Detective Ziegenfuss' identification of Dawkins, Williams, and appellant was permissible pursuant to rule 5-602, in light of her testimony regarding her familiarity with them. Clearly the identity of the people in the video assaulting C.W. was relevant, and Detective Ziegenfuss' familiarity with appellant's tattoos assisted in identifying her and her actions in the video.

III. Child Abuse Conviction

Appellant next argues that appellant was not a "household member" of C.W.'s home, as contemplated in Maryland Annotated Code § 3-601(d) under which appellant was charged and convicted, and therefore the court convicted and sentenced her for a crime with which she was not charged. The State responds that the "language of the charging document sufficed to put her on notice of the charges against her, she was convicted of the crime described in the indictment, and therefore her claim should be denied by this Court." We agree with the State.

Md. Code Ann., Crim. Law Art. § 3-601(d)(1), the statute under which appellant was charged, has two sections which provide:

> (i) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor.
>
> (ii) A household member or family member may not cause abuse to a minor.

The indictment, which cited the above statute, stated that appellant caused "abuse to the victim aforesaid, a child under 18 years of age, the [appellant] being a household member with permanent or temporary care, or temporary responsibility for the supervision

of the victim." The language of the indictment appears to mix both section (d)(1)(i) and section (d)(1)(ii) of the statute. Appellant argues that the wording of the indictment required the State to prove that appellant was a "household member," and that appellant "could not be convicted solely as a person with temporary care or custody of C.W. as that category of people constituted a separate statutory offense for double jeopardy purposes." We disagree.

As we stated in *Morrissey v. State*:

> [A]n indictment for violation of a statute which creates an offense, and specifies several different acts, transactions, or means by which it may be committed, may properly allege the offense in one count by charging the accused in conjunctive terms with doing any or all of the things specified in the statute.

9 Md. App. 470, 475-76 (1970).

"When the State delineate[s] the particular section of the statute, however, [and] charge[s] only the conduct and circumstances proscribed by that section, and, absent appellant's consent, [it is] barred from later amending the indictment to charge different circumstances." *Tapscott v. State*, 106 Md. App. 109, 135 (1995).

In *Tapscott*, the defendant had been charged with an earlier version of the same child abuse statute under which appellant was charged in the present case. 106 Md. App. at 133. The indictment in *Tapscott* alleged that defendant, "'having responsibility for supervision of [the child] ... did cause abuse to said minor child.'" *Id.* The court then instructed the jury that they could convict the defendant of child abuse if they "found defendant to be a person who had 'permanent or temporary care or custody of a child,' when the indictment charged [defendant] with only being a person having 'responsibility for the supervision' of the

child." *Id*. We held that because the State had delineated a particular section of the statute, namely, the section which required the accused to have "responsibility for supervision of the child," it was bound to that section, and that the "jury instruction and verdict sheet which altered the crime alleged to have been committed violated the appellant's constitutional right to be informed of the accusation against him in time to prepare his defense." *Id.* at 136.

The indictment in the present case is distinguishable from the *Tapscott* indictment. Here, the indictment did not delineate a particular section of the statute, but instead merged the language from both sections. It did however, cite the correct general statute with which appellant was charged. The State is not required to narrow the scope of its prosecution to just one section of the statute. *Id*. "The purpose of a criminal information sheet is to 'fulfill the constitutional requirement contained in Article 21 of the Maryland Declaration of Rights that each person charged with a crime must be informed of the accusations against him.'" *McCree v. State*, 214 Md. App. 238, 269 (2013) (quoting *Williams v. State*, 302 Md. 787, 790–91 (1985)). Criminal indictments are required to "first, characterize the crime; and, second ... provide such description of the criminal act alleged to have been committed as will inform the accused of the specific conduct with which he is charged, thereby enabling him to defend against the accusation and avoid a second prosecution for the same criminal offense." *Williams*, 302 Md. at 791. Where a charging document "includes an unnecessary element," or "omits a necessary element," but which correctly identifies the provision alleged to have been violated, the accused "is not, exposed to a risk of future prosecution for the same offense." *McCree*, 214 Md. App. at 270. Where the accused has

"knowledge of the applicable provision" under which he is charged, he is "on notice of the nature of the allegations against him, and [has] sufficient opportunity to formulate a defense against these allegations." *Id.*

Here, the indictment listed the applicable statute under which appellant was charged and used the language of both sections of the statute. She was, therefore, put on notice that she was being charged with either or both sections. Appellant, could have filed a bill of particulars pursuant to Maryland Rule 4-241(a), but did not do so. Further, the State never alleged that appellant was a household member, and at trial, counsel for appellant acknowledged that the State was proceeding under the section prohibiting abuse by a person with "permanent or temporary care or custody or responsibility for the supervision of a minor." During appellant's motion for judgment of acquittal, counsel for appellant argued:

> Your Honor, she's charged, the first three counts, child abuse second degree. Criminal 3-601(d), I believe (1) little (i) states a person – a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause abuse to the minor. … Clearly Ms. – my client is not a parent, she's another person; but I don't believe the state has proven that any – or even addressed that she has permanent or temporary care or custody or responsibility for the supervision of a minor – of this minor.

Later, and in response to the prosecutor's statement that appellant was "regularly in [the] household," counsel for appellant, interjected, stating:

> Your Honor, we are not in that household member portion of the statute, so that's – I don't think that's relevant.

The court denied the motion for judgment of acquittal as to the child abuse counts, stating:

> [L]ooking at whether she was in the temporary care or custody of [appellant], the court does find at least on one occasion she was in [appellant's] temporary care and custody.

Clearly, appellant was not only put on notice of the section of the statute she was being charged with, she had actual knowledge of the section under which the State was proceeding. As a result, she was not exposed to the risk of future prosecution for the same offense. Further, she had "sufficient opportunity to formulate a defense against [the] allegations." McCree, 214 Md. App. at 270. Appellant was then convicted of that section of the statute. As such, appellant's claim that she was convicted and sentenced for a crime for which she was not charged is without merit.

IV. Role of the Trial Court

Appellant next argues that "the trial judge engaged in a pattern of conduct indicating a bias in favor of the State." She argues that the judge "ceded his role as an impartial and disinterested arbiter and became an advocate for the State" when he "engaged in repeated questioning of the State's key witness when the witness was hesitant to answer on direct examination." While conceding that "Appellant did not object to most of the judge's questions," appellant asks this court to "exercise its discretion to utilize a plain error analysis or structural error review." The State responds that appellant's claim is unpreserved, and even if preserved, the "court's behavior did not render the trial unfair; the court's actions were reasonable under the circumstances." Additionally, the State argues, "even if this Court were to determine that the trial court abused its discretion in the way it approached a traumatized nine-year old witness, it does not follow that plain error review

is warranted." We hold that appellant's claim is not preserved, and even if preserved, the court did not commit error in questioning C.W.

At trial, the State called nine-year old C.W. to testify whereupon the following exchange occurred:

STATE:	Was there ever a time when Debbie left the house and left you with Andrea?
C.W.	Once.
STATE:	Okay. Well, was Ande nice to you, mean to you, or something else?
C.W.:	(Shaking head negatively).
STATE:	Can you tell me? Can you tell the judge if she was – if she was nice, mean or something else?
C.W.:	(Nodding head affirmatively).
STATE:	Tell the judge. You can tell him.
C.W.:	Mean.
THE COURT:	Mean, is that what you said?
C.W.:	(Nodding head affirmatively).
THE COURT:	Okay.
STATE:	How was she mean to you?
THE COURT:	What happened? Why do you say she was mean? What happened when you were left with Ande? Go ahead, relax, just –
STATE:	It's okay. Look at me or look at the judge, okay? An can you answer his question?
[DEFENSE COUNSEL]:	Can I approach a second, your honor?
THE COURT:	Come on up.

STATE: You stay right there, okay?

(discussion at the bench)

THE COURT: Do you want your client here or not?

[DEFENSE COUNSEL]: No. I don't have a lot of experience with children, but I know that [the prosecutor] is strategically located between the two, and I know she has the right to see and hear her accuser. I can't – I mean, I'm having trouble seeing her as well; but if she can step aside so we could see. I don't think she's – if she is doing something wrong tell her – but I don't' think she's going to, she's not –

THE COURT: Okay.

STATE: Obviously I'm standing there to – so that she doesn't have to look at the defendant because she's afraid of her.

[DEFENSE COUNSEL]: It goes how it goes. I understand we're not in a jury trial. Okay.

THE COURT: Thank you. All right.

(discussion at the bench concluded.)

STATE: Okay. C.W., can you tell Judge Baynes how Ande was mean to you? You can tell me.

THE COURT: Let me ask you. When you say – when you say she was mean, right? That's what you said, right?

C.W.: (Nodding head affirmatively.)

THE COURT: You've got to say yes or no.

C.W.: Yeah.

THE COURT: What did she do that you think was mean? You can tell me.

STATE: It's okay. You can tell him.

THE COURT: Did she touch you?

C.W.:	(Nodding head affirmatively.)
THE COURT:	Yes, Is that why you are shaking your head?
C.W.:	(Nodding head affirmatively).
THE COURT:	You've got to say yes or no.
C.W.:	Yeah.
THE COURT:	And how did she touch you?
C.W.:	(Demonstrating).
THE COURT:	What's that? Show me. On the arm? Okay. What did she touch you with, her hand or something else?
C.W.:	(Shaking head negatively).
THE COURT:	With her hand, is that what you're telling me?
C.W.:	(Nodding head affirmatively).
THE COURT:	Okay. How hard did she touch you with her hand?
C.W.:	A little.
THE COURT:	Hum? Did it hurt?
C.W.:	(Nodding head affirmatively).
THE COURT:	You're shaking your head yes.
C.W.:	Yeah.
THE COURT:	Did she touch you one time or more than one time.
C.W.:	One.
THE COURT:	One time. (Nodding head affirmatively).
STATE:	[C.W.], did Ande ever touch any other part of your body other than just your arm?
C.W.:	(Nodding head affirmatively).

STATE: Is that a yes?

C.W.: (Nodding head affirmatively).

STATE: The record should reflect she's nodding yes. Can you tell us what other part of your body Ande touched?

C.W.: (Indicating).

THE COURT: Your neck?

C.W.: (Nodding head affirmatively) (Indicating).

THE COURT: You are shaking your head yes?

STATE: Let the record reflect she pointed to her neck.

THE COURT: Any other parts? Can you remember? I mean, you said your arm and your neck. Your leg, your thigh area.

C.W.: (Nodding head affirmatively).

THE COURT: You're pointing to and shaking your head, yes, is that right?

C.W.: Yes.

THE COURT: Can you think of anything else or is that it?

C.W.: That's it.

THE COURT: That's it. Okay. Thanks.

STATE: [C.W.], when Ande touched your neck, how did she touch your neck?

C.W.: In the corner.

STATE: In the corner of what?

THE COURT: Can you show me with your hand how she touched you?

C.W.: (Shaking head negatively.)

THE COURT: No? You can't show me?

STATE:	[C.W.], could you show the judge on my neck how she touched you?
C.W.:	(Shaking head negatively).
STATE:	It's okay. You can. No? Okay.
C.W.:	(Shaking head negatively).
STATE:	When she touched your neck you said in the corner. When did she touch you – or how did that work? How did she touch your neck when you are in the corner? I can't see the movement. I can't see what you're doing. So can you tell me?
C.W.:	Up in the corner.
STATE:	What happened up in the coner?
C.W.:	Neck.
STATE:	You – were you in the corner?
C.W.:	(Nodding head affirmatively).
STATE:	Okay. Well, then was Ande in corner?
C.W.:	(Shaking head negatively).
STATE:	No. How did she – how did she come to touch you if she wasn't in the corner with you?
C.W.:	She was next to the corner.
STATE:	She was what?
C.W.:	By the corner.
STATE:	By the corner. And how did she touch you?
C.W.:	My neck.
STATE:	And what part of her body touched your neck?
C.W.:	Hands.

STATE: Her hands. What did she do, if anything, when her hands were touching your neck?

C.W.: She grabbed me up.

STATE: She grabbed you up. What does that mean? Were you standing up or sitting down?

C.W.: Standing.

STATE: Okay. And what that the only time – well, let me ask you this. Did that hurt when she touched your neck?

C.W.: yeah.

STATE: How did it hurt? Coult you breathe?

C.W.: (Shaking head negatively).

STATE: No, you couldn't breathe?

C.W.: (Shaking head negatively).

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THE COURT: Hey, [C.W.] when she touched your neck, what happened? How did it feel?

C.W.: Bad.

THE COURT: Hum?

STATE: Bad.

THE COURT: Bad, is that what you're telling me?

C.W.: (Nodding head affirmatively).

THE COURT: And did you say it hurt or not hurt?

C.W.: It hurt.

THE COURT: It hurt.

C.W.: (Nodding head affirmatively).

THE COURT:	Did anything else happen when she was touching your neck?
STATE:	Why don't you tell the judge where your toes were when she touched your neck.
C.W.:	Wall. It was on the wall.

Preservation of Claim

"Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Rule 8-131(a). "In the context of a trial court's interrogation of a witness, trial counsel must, at the very least, object to the court's question or comment in order to preserve appellate review of the interrogation." *Smith v. State*, 182 Md. App. 444, 478 (2008). "[A] trial court has broad discretion to ask questions of the witnesses at trial." *Id.* Nevertheless, "when an appellant does not seek to challenge a few, distinct questions posed by the trial court to the witness, but instead seeks to challenge an overall pattern of conduct on the part of the trial court that demonstrates a lack of neutrality, it is unreasonable to expect trial counsel to object each time the trial court decides to intervene." *Id.*

At trial in the present case, nine year old C.W. was examined and cross examined extensively. Defense counsel objected on only four occasions during the course of C.W.'s testimony. On three of those occasions, defense counsel's objection was in response to a question asked by the prosecutor. The fourth objection came when defense counsel took exception to the prosecutor standing between C.W. and appellant. Defense counsel never raised an objection to the court's questioning of C.W., nor did he object to the pattern of

the court's questioning at the conclusion of the testimony. For the foregoing, we hold that appellant has not preserved appellate review of the court's interrogation of C.W.

Trial Court's Questioning of C.W.

Even if preserved, we hold that the court did not commit error when it questioned C.W. We review allegations of unobjected to judicial bias for "plain error." *Diggs v. State*, 409 Md. 260, 286 (2009). "Plain error is 'error which vitally affects a defendant's right to a fair and impartial trial.'" *Id.* (quoting *State v. Daughton*, 321 Md. 206, 211 (1990)). We intervene "only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Trimble v. State*, 300 Md. 387, 397 (1984) (citing *State v. Hutchinson*, 287 Md. 198, 203 (1980)).

"[T]here is no blanket rule prohibiting a trial court from questioning witnesses or counsel, particularly at a bench trial." *Furda v. State*, 194 Md. App. 1, 63 (2010). "It is well-settled that a presiding judge in a jury trial has discretion to question witnesses in order to ensure that the facts of the case are fully developed." *Id.* at 480. "The principal justification for a trial judge to inject himself or herself into the questioning of a witness is to clarify issues in the case." *Id.* "If a judge's comments during [the proceedings] could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion." *Jackson v. State*, 364 Md. at 192, 207 (2001)) (internal quotations omitted).

In the present case, the court was the fact finder and therefore there "was no jury that could have inferred bias from the judge's discourse with the witnesses and counsel, nor danger that the judge's conduct would 'impact the jury's verdict' or impinge on the jury's

'province ... to decide the guilt or innocence of the defendant.'" *Furda*, 194 Md. App. at 64 (quoting *Diggs,* 409 Md. at 289 (internal quotations omitted)). Moreover, the court's questions of C.W. did not suggest bias or partiality, but merely clarified the issues in the case during the testimony of a nine year old witness.

V. Sufficiency of Evidence

Appellant argues that the "evidence was legally insufficient to support [appellant's] conviction for rendering a child in need of assistance," because the State "failed to prove that Appellant was liable under § 3-838" of the Courts and Judicial Proceedings Article, under which appellant was convicted. She argues that to "convict someone under § 3-828, the State must prove, beyond a reasonable doubt, that the person 'willfully contribute[d] to, encourage[d], cause[d] or tend[ed] to cause' two conditions that required a court to intervene in the child's life: (1) abuse or neglect of the child, and (2) the inability or unwillingness of the child's guardian to care for the child." The State responds that "[t]here is no legal support for this argument, and, indeed, it runs contrary to the language of Section 3-828 of the Courts article. They argue that a person who "furthers the sequence of events that ultimately render [s] a child in need of assistance is guilty of violating Section 3-828," and that "[t]here is no requirement that a person must somehow disable a child's guardians from caring for the child." We agree with the State.

Appellant was convicted of § 3-828(a) of Md. Ann. Code. Cts. & Jud. Proc. which prohibits an adult from "willfully contribut[ing] to, encourage[ing], cause[ing] or tend[ing] to cause any act, omission, or condition that renders a child in need of assistance." Section

(b) provides that "[a] person may be convicted under this section even if the child is not adjudicated a CINA." A child in need of assistance ("CINA") is defined as:

> a child who requires court intervention because:
>
> (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
>
> (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

Md. Ann. Code, Cts. & Jud. Proc. Art. § 3-801(f). Appellant argues that, read together, the two statutes require that in order to convict under §3-828(a) the State must prove that there was an "inability or unwillingness of the child's guardian to care for the child." This reading of the statutes, however, runs counter to the plain language of §3-828(b) which allows for a conviction under §3-828(a) without the child being adjudicated a CINA.

To review for sufficiency of evidence, "we review the evidence in the light most favorable to the prosecution and determine whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). This "review standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). "We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *State v. Mayers*, 417 Md. 449, 466 (2010).

In the present case, the State presented evidence that C.W. was in Dawkins' custody pursuant to a "Child Protective Services case in Delaware." The State also produced evidence that appellant acted in concert with Dawkins, C.W.'s guardian, to abuse C.W. As a result, the Department of Social Services, and the Elkton Police Department were forced to intervene. In light of the foregoing, we hold that a rational trier of fact could have found that appellant "willfully contribut[ed] to, encourage[ed], cause[ed] or tend[ed] to cause any act, omission, or condition that renders a child in need of assistance" pursuant to § 3-828(a).

JUDGEMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.