Circuit Court for Baltimore County
Case No. 03-K-17-002277

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3394

September Term, 2018

GREGORY DERON MCKNIGHT

v.

STATE OF MARYLAND

Arthur,
Shaw Geter,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 4, 2020

After discharging his counsel and representing himself at trial, Gregory Deron McKnight, appellant, was convicted by a jury in the Circuit Court for Baltimore County of sodomy, human trafficking, and causing a minor, E., to engage as a subject in pornography. The court sentenced McKnight to a term of 45 years' imprisonment. He noted this appeal, raising the following issues:

> 1. Whether the circuit court erred in determining that McKnight was competent to stand trial and discharge counsel on the first day of trial.
>
> 2. Whether the circuit court improperly restricted McKnight's cross-examination of witness E.
>
> 3. Whether the circuit court abused its discretion in denying McKnight's request to recall E. and E.'s mother.
>
> 4. Whether the circuit court erred in refusing to allow McKnight to admit a police report as evidence.
>
> 5. Whether the circuit court erred in instructing the jury about McKnight's appearance in shackles, a wheelchair and an orange prison jumpsuit, over his objection.

For the reasons discussed herein, we shall affirm.

FACTUAL AND PROCEDURAL HISTORY

On February 17, 2017, McKnight and an accomplice, Robert Gault, took E., then fourteen years old, to a motel room in Baltimore County. There, McKnight engaged in oral and anal sex with E., while Gault took photographs and recorded video footage depicting those sexual acts. Gault paid $100 to McKnight, who gave E. $50.

Approximately four weeks later, E.'s mother became aware that E. had engaged in the sexual acts. She called the police, who identified McKnight and Gault as suspects and obtained a search and seizure warrant for Gault's residence. Upon executing that

warrant, the police recovered digital evidence, including the video and photographs depicting the sexual acts at issue.

A grand jury in Baltimore County returned a five-count indictment against McKnight. The indictment charged McKnight with sexual solicitation of a minor, committing a second-degree sexual offense, sodomy, human trafficking, and causing a minor to engage as a subject in pornography.[1]

Following a two-day jury trial in the Circuit Court for Baltimore County, McKnight was found guilty of sodomy, human trafficking, and causing a minor to engage as a subject in pornography. The State had entered a *nolle prosequi* as to the other charges.

The court sentenced McKnight to a term of 45 years' imprisonment. He noted this timely appeal.

We shall set forth additional facts where pertinent to the discussion of the issues.

DISCUSSION

I. McKnight's Competency to Stand Trial and Discharge Counsel

McKnight complains that the circuit court erred in determining that he was competent to stand trial and to discharge counsel on the first day of trial. Under Maryland law, "the standard for competency to stand trial and to discharge counsel are the same." *Peaks v. State*, 419 Md. 239, 262 n.9 (2011) (citing *Gregg v. State*, 377 Md. 515, 537 (2003)).

[1] In a separate proceeding, Gault pleaded guilty to solicitation of a minor and causing a minor to engage as a subject in pornography.

Defendants are incompetent to stand trial if they are unable "to understand the nature or object of the proceeding" or "to assist in [their] defense." Md. Code (2001, 2018 Repl. Vol), § 3-101(f) of the Criminal Procedure Article ("CP"). "The prohibition against trying an incompetent defendant reflects the due process right to a fair trial under the Fourteenth Amendment of the United States Constitution." *Aleman v. State*, ___ Md. ___, 2020 WL 3526023, at *6 (June 30, 2020) (citing *Drope v. Missouri*, 420 U.S. 162, 171-72 (1975)).

Because a competency inquiry "is highly fact-specific," *Shiflett v. State*, 229 Md. App. 645, 683 (2016), we must set forth the pertinent facts in some detail.

Pretrial proceedings

On September 6, 2017, four months after his indictment, McKnight, acting through counsel from the Office of the Public Defender, entered a plea of not criminally responsible and made a request for a postponement. The circuit court postponed the case until December 18, 2017, and ordered that McKnight be evaluated by the court psychiatrist to determine whether he was not criminally responsible.[2] Because trial counsel did not "have a question regarding his competence" at that time, counsel did not request an evaluation to determine whether McKnight was competent to stand trial.

The chief court psychiatrist examined McKnight and, three days before the scheduled trial date in December 2017, filed a report with the circuit court. The report set

[2] A criminal defendant "is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of the law." CP § 3-109(a).

forth McKnight's extensive psychiatric history, which included several hospitalizations for mental illnesses, including schizophrenia; prescriptions for anti-psychotic medications; a long history of drug abuse; and a commitment in 2007 to Spring Grove Hospital, after he had been found not criminally responsible for a first-degree burglary. According to the report, McKnight had been conditionally released from his commitment on multiple occasions, but in each instance he had to be readmitted because of his "non-compliance with outpatient follow-up." Indeed, when McKnight committed the offenses at issue in this appeal, he was on conditional release from Spring Grove.

On the basis of his examination of McKnight, the court psychiatrist opined that he was "malingering amnesia and psychosis and that he was not impaired by any mental disorder at the time of the offense to the extent that he would meet a legal threshold to be adjudicated NCR." Accordingly, the court psychiatrist opined that, at the time of the offense, McKnight "did not lack substantial capacity to appreciate the criminality of his conduct and to conform that conduct to the requirements of the law" because of a mental disorder – i.e., that McKnight did not meet the criteria for being not criminally responsible. *See* CP § 3-109(a). Although the court psychiatrist had not been asked to evaluate McKnight's competency to stand trial, he went on to opine that McKnight "does not have credible symptoms that would impair his competency to stand trial." He concluded that "Mr. McKnight understands the nature and object of the proceedings and is able to assist in his defense."

When the parties appeared for trial on December 18, 2017, Judge Robert E. Cahill, Jr., found good cause to continue the case beyond the *Hicks* date[3] because the defense needed more time to address the findings in the court psychiatrist's report and because the State needed additional time to extract data from Gault's computer. The trial was continued until February 8, 2018.

Before the trial was to begin, the State and McKnight's counsel negotiated a plea agreement. Under the proposed agreement, McKnight would plead guilty to committing a second-degree sexual offense; the State would enter a *nolle prosequi* as to the remaining charges; McKnight would be subject to a sentence of up to twenty years, with all but thirteen years suspended; and he would be required to register as a sex offender for the rest of his life.

The case was called for a plea hearing before Judge Cahill on February 7, 2018, the day before the scheduled trial date. At the hearing, McKnight's counsel informed the court that, upon meeting her client that day, she discovered that he had stopped taking his medications, purportedly because he had been suffering side effects. Because defense counsel was uncertain about whether McKnight was capable of entering a valid guilty plea at that time, she requested a continuance. The State was surprised by this development and had previously informed the victim that he would not have to testify at

[3] Named after *State v. Hicks*, 285 Md. 310 (1979), the "*Hicks* date" refers to the time limit, currently 180 days after the earlier of the defendant's first appearance or defense counsel's entry of appearance, within which a criminal case must be called for trial, unless the county administrative judge finds good cause to postpone the trial beyond that date. *See* Md. Rule 4-271.

a trial. Consequently, the State said that it had no "other choice" than to agree to a continuance.

At the hearing on February 7, 2018, defense counsel informed the court that McKnight had undergone an evaluation of criminal responsibility but not competence.[4] The court proceeded to examine McKnight on the record to determine whether he was "truly incompetent" at that time or "whether there [was] a good faith basis for making that determination or why."

McKnight told the court that he was "hearing a lot of voices," that he had stopped taking his psychiatric medications because they had caused "bad reactions," and that he had asked his doctor to change his medications. The court asked McKnight's counsel whether he had seemed incompetent; she replied that he had not and that, to the contrary, he had been "very responsive."

The court, "relying completely on" McKnight's statements, which it believed were made to avoid standing trial the following day, "reluctantly" granted a continuance, set a new trial date of May 2, 2018, and ordered an immediate competency evaluation. The court cautioned that if McKnight were to stop taking his medication before the next trial date, it would conclude that he was doing so for illegitimate reasons, especially given that he was exhibiting "no trouble" in answering inquiries from trial counsel or the court.

[4] In fact, although the purpose of the court psychiatrist's earlier evaluation was to determine whether McKnight was not criminally responsible, the report addressed the issue of competence and found that McKnight was competent to stand trial. *See supra* p. 4.

One week later, the chief court psychiatrist examined McKnight again and prepared a report, which he sent to the court on February 28, 2018. In the court psychiatrist's opinion, "no objective evidence" indicated that McKnight had "deteriorated in the detention center," that he had memory impairment or psychoses, or that he was suffering from auditory or visual hallucinations. The court psychiatrist opined that "Mr. McKnight understands the nature and object of the proceedings and is able to assist in his defense" and, therefore, was competent to stand trial.

On April 27, 2018, less than a week before the rescheduled trial date, the court convened a hearing before the administrative judge, Judge Kathleen Gallogly Cox, because McKnight had refused to meet with his counsel to prepare for trial. In accordance with Maryland Rule 4-215(e), the court examined McKnight on the record to determine whether he wanted to discharge counsel and, if so, why.

McKnight stated that he was dissatisfied with the court psychiatrist's "biased" competency evaluation and his trial counsel's failure to obtain a second opinion. He requested a continuance to obtain new counsel. The court concluded that his reasons for discharging counsel were unmeritorious and denied his request for a continuance. The court warned McKnight that it would not postpone the case again and that if he discharged counsel, he would have to represent himself at trial.[5]

[5] At the hearing on April 27, 2018, McKnight used various vulgarities to refer to the the chief court psychiatrist, the court's denial of his postponement request, and the participants in the proceeding, apparently including the court itself. He also referred to his lawyer as a "devil."

The trial was nonetheless postponed again because, on the scheduled trial date, McKnight, in the words of his attorney, "took pills in the lock-up" at "the sheriff's office in the courthouse." The trial was rescheduled for September 24, 2018.

At defense counsel's request, the court convened a hearing before Judge Cahill on July 9, 2018, because McKnight had expressed dissatisfaction with his representation. Throughout the hearing, McKnight was disruptive and refused to answer the court's inquiries. He made frequent outbursts, calling his counsel "a liar" who "doesn't do her job"; someone who is not on his side; and a "demon." The court attempted to examine McKnight, but was forced to resort to asking his counsel whether she was satisfied that he had been given a copy of the indictment, that he had been given the required notice of his right to counsel, and that he had been made fully aware of the nature of the charges and the maximum allowable penalties. The court ascertained that, in the opinion of defense counsel, all of those requirements had been satisfied.[6]

The court gave McKnight an opportunity to explain why he wanted to discharge counsel and warned him that, were he to discharge counsel and not have another attorney available to enter an appearance, he could face the prospect of going to trial without representation. McKnight replied, "Kill that b**** because she has got demons in her." He continued to berate trial counsel, declaring that he wanted the court to "kill her," that

[6] The court admitted two exhibits, apparently prepared by someone other than McKnight, outlining McKnight's reasons for wanting to discharge counsel. When asked whether he had typed one of those documents or whether someone else had, McKnight replied, "So I just pulled the computer out of my ass and just started typing and I brought the piece of paper over here and gave it to you. Of course I did. Magically delicious . . . ."

she was "a liar," and that, from the "[f]irst day" that he met her, the "first words" out of her mouth were "bullshit." In response, the court commented:

> The more [you] talk, the more I agree with [the chief court psychiatrist]. The more I observe you, the more I believe that [the chief court psychiatrist] was correct . . . that you are simply malingering and trying to play this out to avoid going to trial. I'm about to reach that conclusion beyond a reasonable doubt in a minute.

McKnight refused to answer the court's question as to whether he wanted to discharge counsel, leading the court to declare:

> . . . I don't even know if I can reach a conclusion that he is making a request to discharge her [counsel] under the circumstances here. He simply is acting up and being disruptive and thinking that he will somehow get an advantage out of acting this way and I do make that conclusion. I do reach that conclusion . . . . I think the Defendant is a malingerer. I think he is putting on a show here hoping to delay things, I guess, even further. I can't find based on the things that he said that he wishes to fire the Office of the Public Defender. I find that he is oppositional, he is defiant and just seeking to cause problems for reasons that I can't fathom but that is what I determined that he is doing. So I am going -- I cannot find at this point in time that Mr. McKnight is making a request to discharge [trial counsel] and the Office of the Public Defender.

The court reiterated its finding that McKnight had presented no meritorious reason for wanting to discharge counsel. The hearing concluded, with one final outburst from McKnight:

> F***ing b****. Kiss my ass. There is nobody f***ing lying, you f***king b****. You possessed by demons too. I see it in you. You f*** with Mary Magdalene. Seven demons, don't you remember?

On July 13, 2018, McKnight sent a letter to the court captioned, "MOTION INEFFECTIVE ASSISTANCE OF COUNSEL." On September 10, 2018, two weeks before trial, the court convened a hearing on that motion before Judge Cahill. At the

hearing, the court read McKnight's complaints into the record and asked McKnight "to further explain" any complaints he might have and any other reasons he had for seeking to discharge his counsel. McKnight replied, "You have to give me a new one."

After McKnight was unable to explain why he wanted to discharge counsel, the court turned to his trial counsel. She gave an extensive summary of the efforts she had made to prepare for trial and reiterated that, if necessary, she was prepared to go to trial. McKnight gave a rambling response, accusing trial counsel of lying. The court found that McKnight had no meritorious reason to discharge counsel, and it warned McKnight that, if he insisted on discharging counsel, he would have to represent himself at trial. As the hearing concluded, McKnight was escorted out of the courtroom, declaring: "You don't believe me. We got the transcript. That is all right. We got the transcript. F*** you, b****. And you ain't nothing but a demon."

Trial

On September 24, 2018, the case proceeded to trial before Judge Jan M. Alexander. After the case was called, the State announced that it was still willing to honor the proposed plea agreement and repeated its terms on the record. When asked whether he wanted to accept that offer, McKnight replied, "I want to fire her."

The court reminded McKnight that, two weeks earlier, it had conducted a hearing and had found no meritorious reason to discharge counsel. McKnight responded that the court's finding was "bullshit." Thereafter, the court conducted a waiver colloquy, to ensure that McKnight had made a knowing and voluntary decision to discharge counsel. After reciting the charges and the maximum penalties, the court stated, "I do not believe

that he is suffering from any psychological or psychiatric disorder that prevents him from answering when I have asked him certain questions." The court found that McKnight had been selectively responsive to its inquiries:

> He tells me that those are ridiculous questions, such as does he speak English and understand English. His response is you know, that is a ridiculous question, I'm answering, aren't I? But he has chosen to be unresponsive to other questions of inquiry.

The court added that it was "not aware of any psychological or psychiatric impairment, nor any evidence that he [was] suffering from or under the influence of any drugs or alcohol."

The State informed the court that McKnight had been evaluated twice by the court psychiatrist and had been found competent to stand trial both times. The court observed that the administrative judge had recently found no meritorious reason to discharge defense counsel; that McKnight had been advised that he could discharge defense counsel, but that he would have to represent himself or engage private counsel; that McKnight had exercised the right to discharge trial counsel; and that trial counsel had given McKnight the entire file, except for work product. The court affirmed that it had "read the reports from the [c]ourt psychiatrist," which had determined that McKnight was "a malingerer" and was "being evasive in an attempt to delay these proceedings; [and] that he [did] not suffer from a psychological or psychiatric disorder." With that, the court struck the appearance of trial counsel.

During the trial, McKnight exhibited episodes of bizarre behavior interspersed with periods of lucidity. For example, when the court asked McKnight how he wanted to

plead, he replied, "I know Mary Magdalene," prompting the court to "take his lack of response" as a not guilty plea. When asked whether he wanted to elect a bench trial or a jury trial, he claimed not to understand; the court elected a jury trial on his behalf, observing that he was "choosing to selectively communicate[.]" At other times, McKnight claimed that he did not "understand anything"; that he could not read, as he had only a fifth-grade education; and that he had spent his entire life in a mental hospital.

McKnight refused to come to the bench to participate in voir dire. In fact, he refused even to acknowledge that the court had invited him to come to the bench. The court observed that McKnight "[chose] not to respond while . . . looking directly at" the judge.

On another occasion, the court observed that McKnight did not acknowledge its offer to come up to the bench for a discussion. The court stated, "I will take that as a waiver."

During the State's examination of witnesses, McKnight occasionally made remarks and comments. When the State objected, he claimed that he "was talking to himself" and that he was "crazy." More than once, McKnight claimed that he heard "voices." When the court asked whether he intended to call any witnesses, he replied that he wanted to call "God."

Nonetheless, McKnight frequently demonstrated an acute understanding of the nature and object of the proceedings. In cross-examining the victim's mother, he reminded her that she was under oath. He objected appropriately when the State asked a leading question during the victim's direct testimony. He followed up on that point

during cross-examination, challenging the victim's recollection on the premise that the prosecutor had, according to McKnight, told him what to say. Several times, McKnight successfully impeached the victim with a statement attributed to him in a police report. Moreover, during the cross-examination of the victim, McKnight explained that he was asking variations of the same question in the hope that the witness would vary his answers. "That is how you tell if someone is lying," he explained.

On the second day of trial, McKnight demonstrated an understanding of the proceedings in his cross-examination of a police detective, asking relevant questions during an exchange that spanned nearly thirty pages of the transcript. Similarly, when the court advised McKnight of his right to testify (and of the State's concomitant right to cross-examine him and potentially to bring up his prior convictions and evidence of other wrongs), he replied, on four occasions, that it would not be in his "best interests."

Analysis

A criminal defendant "is presumed to be competent to stand trial." *Peaks v. State*, 419 Md. 239, 251 (2011) (citing *Ware v. State*, 360 Md. 650, 703 (2000)). Persons are "incompetent to stand trial" if they are unable either "to understand the nature or object of the proceeding" or "to assist in" their own defense. CP § 3-101(f).

"If, before or during a trial, the defendant in a criminal case . . . appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial." CP § 3-104(a). "'[A] trial court's duty to determine the competency of the accused is triggered in one of three ways: (1) upon motion of the

accused; (2) upon motion of the defense counsel; or (3) upon a *sua sponte* determination by the court that the defendant may not be competent to stand trial.'" *Wood v. State*, 436 Md. 276, 287 (2013) (quoting *Thanos v. State*, 330 Md. 77, 85 (1993)).

"[W]here the evidence raises a 'bona fide doubt' as to a defendant's competence to stand trial, the trial judge must *sua sponte* raise the issue and make a competency determination based on evidence presented on the record." *Id.* at 290 (citing *Gregg v. State*, 377 Md. 515, 528 (2003)). "'[E]vidence of a defendant's irrational behavior, [the defendant's] demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required[.]'" *Gregg v. State*, 377 Md. at 528 (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)).

"[C]ompetence to stand trial (or to waive counsel) is a very different thing than criminal responsibility." *Muhammad v. State*, 177 Md. App. 188, 259 (2007). Competence "is far more a matter of raw intelligence than it is of balanced psychiatric judgment or legal sanity or of mental health generally." *Id*. Defendants may be competent to stand trial even if they suffer from some forms of mental illness.

McKnight contends that his conduct during the trial triggered the court's obligation to inquire, on its own motion, whether he was competent to stand trial. He complains that the court could not rely on the previous findings of competency, which were at least seven months old by the time of trial.

On this record, we are unpersuaded that the court had an obligation, on its own motion, to conduct another inquiry into McKnight's competence. By the time the trial finally began, after McKnight had secured multiple postponements, it was abundantly

clear that he was attempting to manipulate the system to his advantage by putting off the day of reckoning for as long as he could. The court was perfectly entitled to view McKnight's occasionally bizarre behavior with skepticism, given the several previous findings (by the court psychiatrist and the court itself) that he was malingering (i.e. that he was feigning symptoms of mental illness). Because of McKnight's selective ability to engage with the court when he chose to do so, and because of the acuity that he frequently exhibited in representing himself, the court was also entitled to disregard the remote possibility that he might have become incompetent in the time since the findings that he was merely malingering. *Accord Peaks v. State*, 419 Md. at 261 ("Judge Alpert could observe that Peaks was competent and that Peaks's unruly behavior was the result of his desire to manipulate or disrupt the court proceedings, and not sufficient or credible evidence of incompetence[]"). The court was not required to evaluate McKnight's competence, again, merely because he was attempting to disrupt a trial that he could no longer prevent or to force an error by testing the court's patience.

Furthermore, McKnight's behavior was comparable to the kind of behavior that has been held not to trigger a duty to reevaluate a defendant's competence. Most notably, in *Thanos v. State*, 330 Md. at 87, the Court held that the trial court did not have a duty to inquire into a capital defendant's competence on its own motion, even though he had a lengthy history of mental illness, he told the court that he would be 200 years old in dog years, and he asked whether he would be executed "by gas" or "by roo-roo."

In summary, on the record in this case, the trial court had no obligation to raise the issue of McKnight's competence on its own motion.

II. The Court's Restriction of McKnight's Cross-Examination of the Witnesses

McKnight's second and third issues are closely related and, for that reason, shall be addressed together. McKnight contends that the circuit court improperly restricted his cross-examination of the victim, E., in two ways: first, by sustaining the State's objection to a question that sought evidence relevant to an element of sodomy, namely, penetration; and second, by prematurely concluding his cross-examination. McKnight also contends that the circuit court abused its discretion in refusing to allow him to recall two witnesses, E. and E.'s mother, for additional cross-examination.

A. Excluding Testimony as to Whether the Victim Experienced Discomfort

During his cross-examination of the victim, E., McKnight sought to elicit an admission that he and E. had only pretended to engage in anal intercourse. McKnight began by asking whether E. was "actually fully penetrated" or whether it was "a fake out"? E. responded that he did not know. McKnight proceeded to pose a rambling, multi-sentence "question," in which he asked again whether E. was "fully penetrated" and suggested that E. would have experienced pain if penetration had occurred; the court sustained an objection to the form of the question.[7]

[7] The objectionable "question" was:

> Are you sure it wasn't planned that way, the whole thing was just a fake out just to get his money? I'm asking you, you were fully penetrated? As little as you is and big as I am, that you were able to take that with no -- the first time you was able to take that and that is what it was, no pain, no gain?

McKnight went on to ask whether the video "was real"; E. responded that it was. He then asked, again, whether E. was "fully penetrated"; E. responded, again, that he did not know.

Moments later, McKnight asked whether E. "was hurt in any way"; E. responded that he did not know. Still later, E. denied making a comment to the effect that he could "fake it like they do in the movies." Shortly thereafter, McKnight asked whether E. "suffer[ed] from any discomfort" during the recording of the video; the court sustained the State's objection, stating, "That is irrelevant." McKnight responded: "I don't see how that is possible. That is like physics."

McKnight claims that the circuit court erred in sustaining the State's objection to the question about whether E. suffered from any discomfort. That query, he maintains, sought to elicit relevant evidence pertaining to whether E. had been penetrated, which is an element of one of the crimes charged, sodomy.[8]

The State responds that this claim is unpreserved because McKnight failed to proffer the anticipated response to his question. According to the State, the question about the victim's discomfort could have referred to emotional or moral discomfort, rather than physical discomfort.

[8] "[A]nal intercourse" includes "penetration, however slight, of the anus." Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), § 3-301(d)(1)(iv) of the Criminal Law Article ("CL"). *See Wilson v. State*, 132 Md. App. 510, 517 (2000) (observing that penetration is a required element of "sodomy or anal intercourse" for a predecessor statute). In 2020, the General Assembly repealed the common-law crime of sodomy. *See* 2020 Md. Laws, ch. 45.

Under Maryland Rule 5-103(a)(2), a party may not challenge a ruling that excludes evidence unless "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." On this record, it is not at all clear that the relevance of whether E. experienced physical discomfort was apparent from the context of McKnight's question. Even the slightest penetration is legally sufficient to prove that element of the offense, and no proof of force is required. *See* Maryland Criminal Pattern Jury Instruction 4:30. Nonetheless, because McKnight's questions and comments can be read to convey skepticism about whether penetration could have occurred if E. had experienced no discomfort, we shall assume for the sake of argument that McKnight has done enough to preserve this objection for appellate review.

"Evidence is relevant if it tends 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.'" *Walter v. State*, 239 Md. App. 168, 198 (2018) (quoting Md. Rule 5-401). "A court may admit relevant evidence, but it has no discretion to admit evidence that is irrelevant." *Id.* "A ruling that evidence is legally relevant is a conclusion of law, which we review de novo." *Id.* "[R]elevance is generally a low bar." *State v. Simms*, 420 Md. 705, 727 (2011).

We agree that the question of whether E. experienced discomfort during the recording of the video has some relevance, however minimal, to the question of whether penetration occurred or whether he and McKnight were pretending to engage in anal

intercourse. The court erred, therefore, in sustaining an objection to McKnight's question on the ground that it was irrelevant.

We nonetheless are convinced, beyond a reasonable doubt, that any error was harmless. McKnight complains that the circuit court prevented him from asking the question at issue concerning physical discomfort and, inferentially, penetration. He fails to recognize, however, that he was permitted to cross-examine E. about that very subject: he asked E. twice whether he had been "fully penetrated" and, in the context of penetration, whether he had been "hurt in any way physically."

When McKnight asked, again, whether E. suffered any discomfort, the court could have sustained the State's objection under Maryland Rule 5-403, which authorizes a circuit court to exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."[9] Because the answer to McKnight's repetitive question would have added little, if anything, to the jury's understanding of the issues, we are convinced that McKnight suffered no prejudice when the court erroneously sustained the State's objection on grounds of relevance. In this regard, we note that the court admitted the video and several still photographs into evidence, thereby enabling the jurors to determine for themselves what had occurred. *See Rosales v. State*, 463 Md. 552, 581-83

[9] Indeed, because questions of relevance are often combined with questions concerning the probative value of relevant evidence, the court may well have intended to base its ruling on Rule 5-403.

(2019) (finding harmless error, where trial court had improperly restricted defense impeachment of the victim, because "the jury had the benefit of sufficient information to evaluate and determine the victim's credibility").

B. Curtailing McKnight's Cross-Examination of the Victim

The direct examination of E. filled less than nine transcript pages. By contrast, McKnight's cross-examination of E. covers more than thirty pages.

McKnight often asked the same questions on repeated occasions.[10] In addition, McKnight interjected comments on the witness's testimony, attempted to testify, made arguments, and talked to himself. Eventually, the court warned McKnight, at the bench, that he was repeating the same questions over and over, that he was coming close to badgering the witness, and that the court would put an end to the examination unless McKnight had new areas to cover.

The cross-examination resumed, but not for long. McKnight asked a question that he had previously asked; the State objected; and the court sustained the objection. McKnight responded by expressing confusion about whether he had previously asked that question and about what the answer had been. McKnight then asked what he said was his "last question," which he posed to the court: Could he recall witnesses later? The court declined to answer the question in front of the jury; McKnight asked another

[10] Indeed, during a bench conference, McKnight admitted that he deliberately asked the same question more than once because he believed that technique would reveal whether the witness was "lying."

question of the witness; the State objected, apparently on the ground that McKnight had already asked the same question; and the court sustained the objection.

Thereafter, McKnight posed no further questions to the witness. Instead, he asked the court, again, whether he could recall witnesses and whether there was a time limit on his cross-examination and argued that the court had to give him more time. He did not, however, proffer what additional questions he would ask. The court found that McKnight had run out of questions and, accordingly, put an end to the cross-examination.

McKnight contends that the circuit court prematurely cut off his cross-examination of E., thereby violating his constitutional right of confrontation. The State contends that the issue is unpreserved because McKnight made no proffer of any additional questions that he was prevented from asking. In any event, the State argues that the court did not err or abuse its discretion in controlling the cross-examination of E., because it gave McKnight "wide latitude."

To preserve an objection to a limitation on cross-examination, a party must proffer what the witness's testimony would have been. *See, e.g.*, *Grandison v. State*, 341 Md. 175, 207 (1995). Because McKnight did not make even a minimal proffer, he has not preserved his objection. We cannot fault the circuit court for concluding that McKnight had nothing new to ask when he failed to disclose what he intended to ask and what he expected the witness to say.

But even if the issue were preserved, we would find no error or abuse of discretion.

The Confrontation Clause of the Sixth Amendment to the United States

Constitution and Article 21 of the Maryland Declaration of Rights both guarantee a criminal defendant the right to confront adverse witnesses. *Simmons v. State*, 333 Md. 547, 554-55 (1994); *Taylor v. State*, 226 Md. App. 317, 332-33 (2016). This right "includes the right to cross-examine a witness about matters which affect the witness's bias, interest or motive to testify falsely." *Marshall v. State*, 346 Md. 186, 192 (1997). This right, however, is "'subject to reasonable restrictions.'" *Pantazes v. State*, 376 Md. 661, 680-81 (2003) (quoting *United States v. Scheffer*, 523 U.S. 303, 308 (1998)). Trial judges "have wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* at 680.

A court's decision to limit cross-examination is reviewed under the abuse of discretion standard. *Pantazes v. State*, 376 Md. at 681. In determining whether a trial court abused its discretion, appellate courts ask "whether the trial judge imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial." *Id.* at 681-82 (citing *Merzbacher v. State*, 346 Md. 391, 413 (1997)).

The circuit court did not inhibit McKnight's ability to receive a fair trial. McKnight's cross-examination of the victim was lengthy, rambling, and sometimes incoherent. The court exhibited an admirable degree of patience and restraint in its interactions with him. After the court finally warned him that it would put an end to the examination unless he moved to a new topic, McKnight posed what he called his "last question," to the court, not the witness. After abruptly changing gears and posing yet another redundant question to the witness, McKnight, when pressed by the court, could

think of nothing more to ask him, and instead asked the court for additional time. The record amply supports the court's apparent conclusion that McKnight had no further relevant questions to ask the witness and was merely engaging in dilatory tactics. The circuit court properly exercised its discretion to bring the ordeal to a conclusion; it did not inhibit McKnight's right to receive a fair trial.

C. Declining McKnight's Request to Recall Witnesses

On the morning of the second day of trial, the court began by addressing a question that McKnight had raised the previous day – whether he could recall witnesses. The court asked McKnight what new lines of questions he wanted to ask.

McKnight responded that he wanted to question E., the victim, about "events" that had occurred at the hotel regarding "the exchange of money." The court observed that McKnight had asked similar questions the previous day and inquired why McKnight had not asked everything he had wanted to ask when the witness was still on the stand. McKnight claimed that he could not read and that he had needed to obtain help from a fellow prisoner after the previous session had concluded. The court noted that, in cross-examining the victim on the first day of trial, McKnight had been reading from a police report and asking questions based upon what he had read.

A few pages later, McKnight asked to recall E. so that he could clarify E.'s answers about whether he had been penetrated. McKnight complained the State had been permitted to ask E. an additional question during its redirect examination. The court responded that the State's limited inquiry was permissible, that McKnight had "extensively" covered this issue the day before, and that any additional inquiry was

unnecessary. McKnight replied by disavowing this ground for recalling E. and stating that he had only wanted "to see why" the prosecutor "was able" to ask an additional question and "to see what [the court] was going to say."

McKnight proceeded to assert a need to pose a number of other questions for E., all of which he covered or could have covered the previous day. The questions generally related to whether McKnight or Gault had approached E. "about doing a video for money." McKnight also said that he wanted to obtain a "complete time line."

The State opposed McKnight's request to recall E., pointing out that he had cross-examined the youthful victim for more than an hour and a half the preceding day. The circuit court denied the request, because McKnight had had a "sufficient opportunity" to cross-examine E. and because any "lack of preparation" was no excuse for his failure "to ask whatever questions of inquiry that [he] wanted to go into."

McKnight also asked for permission to recall E.'s mother. He said that he wanted to ask E.'s mother about when she told him that she did not want him at her house, because, he said, that would shed light on when she sought a protective order against McKnight. The court explained that this inquiry was irrelevant.

The State opposed McKnight's request to recall E.'s mother because nothing he wanted to ask her was relevant to any of the charges. In response, McKnight said that he wanted to ask her about her purported allegation that he had been stalking her family. The court replied that he was not charged with stalking and denied the request to recall E.'s mother.

McKnight contends that the circuit court abused its discretion in denying his requests to recall E. and his mother. The State counters that the circuit court did not abuse its discretion in denying McKnight's requests to recall witnesses because the court determined, after conducting an extensive colloquy, that all the reasons he proffered for his request would have resulted in either cumulative or irrelevant evidence and that McKnight failed to demonstrate that he had no prior opportunity to pursue the proposed lines of questioning during the first day of trial.

Maryland Rule 5-611, which gives courts control over the interrogation of witnesses, states in relevant part:

> **(a) Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
>
> **(b) Scope of Cross-Examination.**
>
> (1) Except as provided in subsection (b)(2), cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. Except for the cross-examination of an accused who testifies on a preliminary matter, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

"Trial courts are granted broad discretion under Md. Rule 5-611(a) to control the mode and order of the interrogation of witnesses and the parties' presentation of evidence." *Myer v. State*, 403 Md. 463, 476 (2008). "We review an exercise of this authority for abuse of discretion." *Id.* (citation omitted). In this context, "[a]n abuse of

discretion can occur when the trial judge's action 'impair[s] the ability of the defendant to answer and otherwise receive a fair trial.'" *Id.* (quoting *State v. Hepple*, 279 Md. 265, 270 (1977)).

As the circuit court explained, to the extent that any of McKnight's proposed lines of inquiry were relevant, he had more than a sufficient opportunity to explore them the preceding day and, in fact, did so. The circuit court did not impair McKnight's ability to receive a fair trial by prohibiting him from recalling witnesses for the purpose of introducing evidence that he could have elicited previously. The court, therefore, did not abuse its discretion in denying McKnight's request to recall witnesses.

III. The Court's Exclusion of the Police Report

During his cross-examination of the victim, McKnight impeached him with prior inconsistent statements drawn from a police report. On several occasions during the cross-examination, the court sustained the State's objections because McKnight read from the report instead of posing questions based upon it.

After the State had rested its case, McKnight expressed his intention to introduce the police report into evidence. Over the course of a lengthy series of exchanges, the court informed McKnight that he could not introduce the police report without calling a witness to authenticate it and lay the foundation for its admissibility.

McKnight contends that the circuit court erred in refusing to allow him to admit the police report. Citing *Holcomb v. State*, 307 Md. 457, 461-62 (1986), he argues that, to the extent that the police report recorded the facts observed by the investigating officers, it would have been admissible under Maryland Rule 5-803(b)(6), the business

records exception to the hearsay rule. Citing *Ali v. State*, 314 Md. 295, 304 (1988), *abrogated in part on other grounds*, *Nance v. State*, 331 Md. 549 (1993), he argues that, to the extent that the report recorded statements made by others, those statements might be admissible for the non-hearsay purpose of proving that those words were spoken, and not to prove the truth of the matter asserted by the declarants. He does not address how he could authenticate the report without a witness to testify that it was what he claimed it to be.

The State counters that this issue is unpreserved because McKnight did not offer the report to be marked for identification at trial and appellate counsel did not move to supplement the record with a copy, and, thus, the report is not part of the record. We agree that the issue is unpreserved.

Because we do not have access to the police report, we have no way of telling what parts of it would be admissible under any hearsay exception. Similarly, we have no way of telling whether any statements within the report would be admissible on the premise that they might be admitted for a non-hearsay purpose. In these circumstances, we cannot evaluate the allegation of error.

Even if the document were before us, however, we would not find error. A police report is not a self-authenticating document. *See generally* Md. Rule 5-902. Therefore, McKnight could not introduce the report without some testimony from some witness to the effect that the document was an accurate copy of the police report in his case. *See, e.g.*, *Jackson v. State*, 460 Md. 107, 115-16 (2018); Md. Rule 5-901. He had no such testimony. Accordingly, the court could not have erred in excluding the document.

IV. The Court's Instruction to Disregard McKnight's Appearance

On the morning of the second day of McKnight's two-day trial, the court convened a bench conference. One of the matters addressed was the State's request that the court instruct the jury to disregard the fact that McKnight was dressed in an orange jumpsuit, was shackled, and was using a wheelchair.[11]

When the court asked if McKnight had a position on the proposed instruction, he answered: "I have no idea what the hell you just said." The court responded by explaining the purpose of the instruction that the State had requested. McKnight replied: "That is not what I want. I let her pick her own jury. I didn't deny against her jury." After confirming that McKnight did not want the court to give the proposed instruction, the court overruled the objection and stated it would instruct the jury to disregard McKnight's appearance.

As part of its instructions to the jury at the end of the trial, the court said:

> [T]he defendant has been seated in a wheelchair, clothed in an orange prison jumpsuit with his wrists and ankles shackled. These facts should play no part in your deliberations and indeed should not even be considered or discussed by you.

McKnight did not reiterate his objection to this or any other instruction after the court had finished instructing the jury.

McKnight contends that the circuit court erred in instructing the jury, over his objection, not to draw an adverse inference from his appearance in shackles, a

[11] The record does not disclose why McKnight was shackled and was wearing prison garb. McKnight does not claim that the court violated his due process rights by requiring him to appear in shackles and prison attire.

wheelchair, and an orange prison jumpsuit. He draws an analogy between this case and cases where a trial court, over a defense objection, instructs the jury not to draw an adverse inference from a defendant's election not to testify on his own behalf. *See, e.g.*, *Hardaway v. State*, 317 Md. 160, 165 (1989) (holding that, "if the defendant believes in a particular case that the [no adverse inference] instruction is not beneficial, he should be able to forego it").

The State asserts that McKnight failed to preserve this issue for review because he failed to object after the circuit court gave the disputed instruction, despite being provided an opportunity to do so. We agree that the issue is unpreserved.

Under Maryland Rule 4-325(e), "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." "A principal purpose of Rule 4-325(e) 'is to give the trial court an opportunity to correct an inadequate instruction' before the jury begins deliberations." *Alston v. State*, 414 Md. 92, 112 (2010) (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)).

McKnight did not object on the record promptly after the court instructed the jury, stating distinctly the matter to which he objected and the grounds of the objection. To the contrary, he acquiesced in the instructions as given when he expressed no comment on

them. Under Rule 4-325(e), therefore, he may not assign as error the giving of any instruction.[12]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

[12] It makes no difference that McKnight waived his right to counsel and represented himself at trial. "'[T]he procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear pro se.'" *Gantt v. State*, 241 Md. App. 276, 302 (2019) (quoting *Tretick v. Layman*, 95 Md. App. 62, 86 (1993)).