Circuit Court for Montgomery County
Case No. 135721C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 68

September Term, 2020

BAILEY RANDAL PATRICK

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 18, 2022

Appellant, Bailey Randal Patrick, was accused by A.A., a 14-year-old girl, of engaging in multiple instances of sexual contact with A.A. when he was 22 years old. Specifically, A.A. told detectives that, in May 2018, she placed her hand on appellant's penis, and in July 2018, at the request of appellant, she engaged in fellatio with him. Detective Timothy Beardsley interviewed appellant, and appellant admitted to both the May and July incidents.

A jury in the Circuit Court for Montgomery County found appellant guilty of a third-degree sex offense relating to the July incident. The court sentenced appellant to ten years' incarceration, all suspended, followed by five years' supervised probation. Appellant was also required to register as a tier two sex offender for 15 years.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in denying appellant's motions to postpone the trial and the suppression hearing?

2. Did the circuit court err in denying appellant's motion to suppress the statement he made to the police?

3. Did the circuit court abuse its discretion in admitting other crimes evidence?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and A.A. met through mutual acquaintances, Ashley and Tiffany.[1] Appellant was 22 years old**,** and A.A. was 14.

In May 2018, A.A. was staying overnight at the apartment of Ashley and Tiffany in Rockville. At approximately 6:00 p.m., appellant stopped by the home. A.A., Ashley, Tiffany, appellant, and another acquaintance, Kevin, watched television and ate dinner together. Eventually all but A.A. and appellant went to sleep. They went for a walk and returned at approximately 3:30 a.m. While the two were on a bed at the apartment, they kissed, and appellant took A.A.'s hand and placed it on his penis. A.A. stated that he "had [her] masturbate him." She stopped, however, because, at that time, she was romantically involved with Kevin and was uncomfortable engaging in sexual conduct with appellant.

The next time A.A. and appellant saw each other was on July 9, 2018, when appellant invited A.A. to see a movie. They met in the morning near Rockville Towne Center. Appellant led A.A. to a wooded area, and when they reached a clearing, appellant asked A.A. to get on her knees and fellate him, which she did. They then went to a movie theater and watched a movie. Later that day, after A.A. had returned home, she told a friend what had happened. The following February, she filed a police report, informing Montgomery County police officers about her interactions with appellant.

Detective Beardsley, a member of the Montgomery County Police Department, interviewed A.A. in February 2019, shortly after she had informed the police of the sexual

[1] Although A.A. was a minor, Ashley and Tiffany were 19 and 18, respectively.

encounters. On April 15, 2019, Detective Beardsley called appellant and asked him to come to the police station for an interview. Appellant agreed to do so and arrived at the police station an hour later. Appellant was accompanied by his caretaker, Edmund Morris, who waited in a nearby room after Detective Beardsley informed him that he could not accompany appellant during the interview. The interview lasted approximately 40 minutes.

At the outset, Detective Beardsley told appellant that he was free to leave at any time, and he showed appellant that the door to the room was unlocked. During that interview, as discussed in more detail, *infra*, appellant acknowledged that he had engaged in sexual activity with A.A. in May and July 2018. He also admitted that, prior to the July incident, he was aware that A.A. was 14 years old.[2]

Prior to admitting to the July incident, however, appellant's body language and speech changed, and he briefly referred to himself in the third person as "Luke." He explained to Detective Beardsley that he suffered from a dissociative disorder and "choice amnesia," and Luke was an alternate personality. At the conclusion of the interview, Detective Beardsley told appellant that he would have to review the matter with the State's Attorney's Office, and appellant left the police station. Two days later, a statement of

[2] Appellant was charged with two counts of sexual offense in the third degree, one for the May encounter and one for the July encounter, in violation of Md. Code Ann., Crim. Law ("CR") Article § 3-307(a)(4) (2021 Repl. Vol.), which prohibits a person at least 21 years of age from engaging in sexual activity with a person 14 to 15 years of age. Appellant was 22 years old at the time of both of the alleged sexual encounters, and A.A. was 14 and 15 years old, respectively, at the time of the encounters.

charges was filed against appellant in the District Court of Maryland for Montgomery County, and an arrest warrant was issued.

On May 16, 2019, an indictment was returned in the Circuit Court for Montgomery County, charging appellant with two counts of sexual offense in the third degree. Count 1 alleged the touching in May 2018, and Count 2 alleged the fellatio in July 2018. Trial initially was scheduled for August 28, 2019.

On August 1, 2019, appellant filed a suggestion of incompetency and a request for outpatient evaluation. That same day, the circuit court granted a defense request for a postponement. Motions were scheduled for October 11, 2019, and trial was rescheduled for October 16, 2019. One day later, the court ordered that appellant be committed to the Maryland Department of Health for an outpatient evaluation for competency and criminal responsibility.

On September 11, 2019, appellant sought another postponement because the expert he had retained for his mental health evaluation, Dr. Kenneth Stefano, was unavailable to testify on the rescheduled trial date. On September 19, 2019, appellant filed a plea of not criminally responsible ("NCR"). On October 1, 2019, the circuit court granted appellant's request and rescheduled trial for November 6, 2019. On October 7, 2019, appellant filed a consent motion to postpone the motions hearing**,** which the court granted several days later, rescheduling the motions hearing for October 31, 2019.[3]

[3] Appellant filed this as a consent motion to postpone the motions hearing. He stated as an additional reason for the postponement that the State's expert witness did not expect

On October 30, 2019, the day before the rescheduled motions hearing, appellant filed another motion requesting postponements of the motions hearing and the trial date. In that motion, appellant stated that Dr. Stefano had attempted to diagnose appellant's mental disorder in an outpatient setting, but he was unable to do so and required an inpatient commitment of appellant for five or six weeks to perform an adequate evaluation.

On October 31, 2019, the court held a hearing on appellant's motions. The court first addressed appellant's motion to postpone the trial. The court observed that, pursuant to the prior order committing appellant to the Department of Health for evaluation, it had received a report, dated October 9, 2019, concluding that appellant was both competent to stand trial and criminally responsible. The court noted that it did not "have any other testimony or evidence" indicating that appellant was "anything other than competent" to stand trial. It stated that it was "mystified as to how it is that the State had no difficulty talking with him and concluding that [appellant] was competent. And the Defense doctor can't even say whether [appellant was] competent or not."

In response, appellant's counsel asserted that when she evaluates competency, she "delve[s] deeper," i.e., she discusses with the doctor her client's ability to testify. Counsel noted that appellant had been unable to practice direct examination without experiencing a seizure. Counsel further explained that the diagnosis that appellant received from Dr. Stefano, a disorder that "touches on bipolar schizoid affective disorder" and "rule out on

to finish her evaluation of appellant until October 11, 2019, which was the day of the motions hearing.

dissociative" disorder, was "not particularly helpful to the Court," and because it was incredibly difficult to diagnose dissociative identity disorder, Dr. Stefano would not testify that appellant suffered from dissociative identity disorder "until he's 100 percent sure." Accordingly, counsel asserted that a continuance was necessary to give Dr. Stefano more time to determine whether appellant was truly competent to stand trial. Counsel told the court that, if it agreed to grant the postponement, the "only assurance" regarding the ability to get an opinion was that appellant would be committed voluntarily, and upon the conclusion of the five-to-six-week period, Dr. Stefano could "figure out what is going on with" appellant's seizures and dissociation.

The State agreed with appellant's counsel that appellant was dissociating at the time of his statement to Detective Beardsley. The State also agreed that appellant "was not malingering."

The court denied appellant's motion to postpone. The court stated:

> I'm not suggesting that he's faking anything. I'm suggesting that I don't have any opinion from any medical expert other than the state doctor who interviewed him after he had already been treating with Dr. Stefano, who says I find him competent.
>
> * * *
>
> So, obviously this is a person with mental health issues, and I try to be sensitive to that. I appreciate that. But, no one seems to be giving me any information by way of medical testimony that where we're going on this. And, if I'm just to simply open-endedly continue this case so he can be hospitalized and further tested . . . I don't know where it gets us on this case.

The court further explained that there already had been two postponements, and it wanted to avoid "open-endedly" continuing the case without "any end in sight."

Appellant then made an oral motion to postpone the suppression hearing, which was already scheduled for later that day, to the morning of trial, scheduled for November 6, 2019. According to counsel, the postponement was necessary "so that we could bring in Dr. Stefano to testify about something, I'm not sure what." Counsel stated that she would like the "motions judge to hear testimony from a doctor that at least it is a rule out on the dissociative disorder pursuant to as [the State] said, when you watch the statement . . . [t]here's this marked change in [appellant]."

The State did not object to postponing the suppression hearing, as long as it was not reset for the same day as trial. The prosecutor stated: "I have no objection to [continuing] the motions hearing maybe a week. But, I don't think we can do it on the trial date."

The court denied counsel's request to postpone the suppression hearing, ruling that the suppression hearing would not be further postponed because trial was scheduled in less than a week, and it wanted to avoid scheduling a suppression hearing on the date that trial was supposed to begin. The court stated: "I don't like you know, dumping a motion when these are things that should have been taken care of and now you're asking me to have the trial judge before we even panel a jury, start doing motions, and I just don't think that's fair."

Later that day, at the ensuing suppression hearing, defense counsel argued that appellant's statement should be suppressed based on "a lack of voluntariness" as a result of his dissociative disorder, but counsel conceded that she did not "have an expert to say that definitively." The principal evidence was a recording of the interview between

appellant and Detective Beasley, admitted as State's Exhibit 1, which was played for the court and transcribed into the record. Prior to playing the video, the parties also made three stipulations: (1) if appellant testified, he would testify that he dissociated during the interview with Detective Beardsley; (2) the recording of the interview was admissible and authentic; and (3) if Detective Beardsley testified, he would testify that appellant was not under arrest at the time of the interview.

In relevant part, and as shown in State's Exhibit 1, the following colloquy occurred between appellant and Detective Beardsley when appellant was questioned regarding the May encounter:

> [DETECTIVE BEARDSLEY]: Okay. [A.A.'s] not saying that any of this was forced, so we're fine there. I just need to make sure from my point of view investigating this that there was no force. So, you just said it was consensual.
>
> [APPELLANT]: Yes.
>
> [DETECTIVE BEARDSLEY]: Did you ask her for a hand job because so far everything she's saying and you're telling me are matching to a T. Was it over the clothes or under the clothes?
>
> [APPELLANT]: It was over.
>
> [DETECTIVE BEARDSLEY]: Okay. Did she ever touch your penis skin to skin?
>
> [APPELLANT]: No.
>
> [DETECTIVE BEARDSLEY]: Are you sure?
>
> [APPELLANT]: Yes.
>
> [DETECTIVE BEARDSLEY]: Okay. Did you ever unbuckle your pants?

[APPELLANT]: Yes.

[DETECTIVE BEARDSLEY]: Okay. What happened when you unbuckled your pants?

[APPELLANT]: She said, no, Kevin, and I was like, yeah, that's fair.

[DETECTIVE BEARDSLEY]: Okay. She said she pulled your penis out of your pants.

[APPELLANT]: I don't remember that happening.

[DETECTIVE BEARDSLEY]: Okay, but is it possible that that happened?

[APPELLANT]: Probably.

[DETECTIVE BEARDSLEY]: It's possible that she touched your penis skin to skin?

[APPELLANT]: It is possible.

[DETECTIVE BEARDSLEY]: Okay. Do you remember if she finished you off?

[APPELLANT]: No.

[DETECTIVE BEARDSLEY]: No, you don't remember or no you didn't finish?

[APPELLANT]: No, I didn't finish.

[DETECTIVE BEARDSLEY]: Okay. How long did it last?

[APPELLANT]: I don't know. I'm terrible with the time.

[DETECTIVE BEARDSLEY]: A couple minutes or like a half hour?

[APPELLANT]: Okay, shorter than a half hour, probably about two minutes if that.

Later, Detective Beardsley attempted to question appellant regarding the July encounter. Appellant said that he did not remember any of the July interaction with A.A., including walking through the woods, engaging in fellatio, or watching a movie together. Appellant said that either A.A. was lying, or he was having "choice amnesia," which had happened before.

At that point, appellant paused, shook his head violently, sat up in his seat, and the following exchange occurred:

> [DETECTIVE BEARDSLEY]: I want to know what happened in the woods and I want to know whether or not you forced her to give you a blow job unless something else happened. You didn't have sex with her there, did you?
>
> [APPELLANT]: Yes, so he's gone. No, we didn't have sex, yes, she gave me a blowjob. However, it didn't last more than a couple of minutes because she was having issue[s]. No, he doesn't remember any of this and he is now panicking. Whoops, I probably should have told him earlier. Good to know. Keep that in mind.
>
> [DETECTIVE BEARDSLEY]: When did you first meet [A.A.]?
>
> [APPELLANT]: He first met [A.A.] –
>
> [DETECTIVE BEARDSLEY]: When you say he, who are you referring to?
>
> [APPELLANT]: Bailey.
>
> [DETCETIVE BEARDSLEY]: Okay, and were you talking about yourself?
>
> [APPELLANT]: In a manner of speaking.
>
> [DETECTIVE BEARDSLEY]: Okay. Why are you suddenly referring to yourself –
>
> [APPELLANT]: In the third person?

[DETCTIVE BEARDSLEY]: Yeah.

[APPELLANT]: Because we suffer from something called dissociative identity disorder –

[DETECTIVE BEARDSLEY]: I got ya.

[APPELLANT]: – and I am one of what he prefers to call the others, so I am –

[DETECIVE BEARDSLEY]: Do you want to take a break?

[APPELLANT]: – one of the splits. No because we might as well get it done now.

[DETECIVE BEARDSLEY]: Okay

[APPELLANT]: He, he's taking a break which is fine.

[DETECIVE BEARDSLEY]: Who's he?

[APPELLANT]: Bailey.

[DETECTIVE BEARDSLEY]: Bailey is taking a break.

[APPELLANT]: Yes. We agreed that my name would be Luke because –

[DETECIVE BEARDSLEY]: Well, I need to talk to Bailey.

[APPELLANT]: That's fine. If he continues speaking, it will be, there will be a seizure and probably a panic attack.

[DETECIVE BEARDSLEY]: Okay. Well, I don't want that to happen so do you need to take a break and get some fresh air? We can take a break. It's no big deal.

[APPELLANT]: In a matter of speaking, I was the one who (unintelligible) with her.

[DETECIVE BEARDSLEY]: Who's her?

[APPELLANT]: The child.

> [DETECIVE BEARDSLEY]: I don't know who that is. What's her name?
>
> [APPELLANT]: We're only speaking of one child.
>
> [DETECIVE BEARDSLEY]: And who's that because I don't like talking about people without using their names because I don't know who we're talking about here. You mentioned Luke, you mentioned the child, you mentioned he.
>
> [APPELLANT]: Okay, so I'm Luke. When I refer to he, it's Bailey. When I refer to the child, it would be [A.A.]

Following the playing of the recorded interview, the State argued that appellant's motion to suppress his statement should be denied because the statement was voluntary. The prosecutor argued that appellant "knew what he was saying, he understood it at the time he said it. . . . He gave an account, a very detailed account of what happened." Moreover, even assuming that appellant dissociated and assumed the identity of Luke, "after that event happens, he actually has more understanding and a better memory," and therefore, his dissociation did not render his statement involuntary.

Appellant's counsel argued that "the threshold issue for the [c]ourt to determine [was] whether [appellant] was essentially in his right mind when he made the statement." Counsel pointed to several instances of strange conduct, such as appellant violently shaking his head, changes in body language and speech, and inappropriate laughter, arguing that such conduct evidenced a lack of voluntariness and noting that Detective Beardsley continued to question appellant despite these instances of strange conduct.

The court denied appellant's motion to suppress. After noting that appellant was not in custody at the time of the interview, the court explained that it "did not find any evidence" that appellant was

> so overborne by his mental disorder that he could not understand what he was saying because the words themselves inherently express an understanding of the communication and even by his own statements, he was clearly able to articulate what had happened and fill in some of the holes that the detective was trying to elicit from him.

The matter proceeded to a two-day jury trial, which lasted from November 6, 2019, to November 7, 2019. At the beginning of trial, the State nol prossed Count 1 of the indictment, leaving only Count 2, the July encounter.[4] Appellant's counsel argued that, given this action, the portion of the recorded statement relating to the May touching should be redacted. The State disagreed, arguing that the portions of the recorded statement relating to the May encounter were still relevant because they went "to the sexual history between [appellant] and [A.A.]" The State asserted that the May touching evidenced appellant's intent and absence of mistake with regard to the July encounter, and under *Odum v. State*, 412 Md. 593 (2010), the May touching was not a separate crime, but rather, it was "all part of a continuing course of conduct that [could not] be separated" from the July encounter.

[4] "A nolle prosequi, or nol pros, is an action taken by the State to dismiss pending charges when it determines that it does not intend to prosecute the defendant under a particular indictment." *Silver v. State*, 420 Md. 415, 425 n.5 (2011) (quoting *State v. Huntley*, 411 Md. 288, 291 n.4 (2009)).

The court ruled in favor of the State, permitting the State to include appellant's statements regarding the May touching when it presented the recorded interview. The court explained: "And with respect to the issue about whether the tape can still contain, I guess, the questions and the statement that [appellant] made with respect to the [May touching], based on [*Odum*], it appears that such statements would be admissible, so I'll allow that."

The victim, A.A., testified as previously summarized, describing both the May and July encounters. A.A. also testified that she had never heard appellant refer to himself as Luke or talk in the third person. She asserted, however, that appellant "zone[d] out" when they were at the park.

Detective Beardsley testified about his investigation and his interview of appellant. During his testimony, the recorded interview of appellant was played before the jury. Defense counsel noted that she maintained her previous objection regarding testimony of the May touching.

The last of the State's witnesses, Dr. Julie Smith, a psychologist from the Department of Health, testified regarding her court-ordered evaluation of appellant. She explained that, during the evaluation, appellant "was very forthcoming, he was very pleasant, [and] he was easy to engage in conversation." Appellant "answered questions in an appropriate manner," and "[h]is thinking was organized." In her expert opinion, appellant was able to appreciate reality and understand his surroundings. She further opined that appellant was competent to stand trial, and there was "no indication at the time of the offense" that he was suffering from symptoms of a major psychiatric disorder. She

also testified that appellant could, to a reasonable degree of psychological certainty, appreciate the criminality of his conduct and conform his behavior to those requirements. She stated that her opinion would not change if she assumed that appellant suffered from a dissociative disorder, which she explained was very rare.

Appellant's caretaker, Mr. Morris, testified for the defense. He helped appellant with walking and sports rehabilitation. At times, appellant "wouldn't really register [Mr. Morris's] presence" and was not responsive. Appellant had seizures several times a week.

Appellant elected not to testify. Defense counsel read a redacted letter from Dr. Stefano to the jury, which was admitted into evidence. It stated that Dr. Stefano was unable to make a diagnostic conclusion after analysis of multiple personality tests.

After a short deliberation, the jury convicted appellant of Count 2, third-degree sexual offense. Defense counsel requested a delay in sentencing so appellant could "commit himself as [he] had been trying to do before trial," i.e., seek inpatient psychiatric evaluation. The State did not object, and the court set the sentencing hearing for February 20, 2020.

On February 20, 2020, more than three months after the trial, appellant returned to court for sentencing. Neither appellant nor A.A. testified, but defense counsel noted that, following his conviction on November 7, 2019, appellant had attempted to seek inpatient treatment at a psychiatric facility, but because of his inability to pay, he was unable to complete an inpatient evaluation. Defense counsel requested probation, and the State requested a suspended sentence followed by probation. The court agreed that incarceration

was inappropriate given appellant's mental condition, and it sentenced appellant to ten years' incarceration, all suspended. Appellant was also placed on five years of supervised probation and was required to register as a tier two sex offender for 15 years.

This appeal followed.

DISCUSSION

I.

Motions to Postpone

A.

Parties' Contentions

Appellant contends that the circuit court abused its discretion in denying his motions to postpone the trial and the suppression hearing. He argues that his counsel acted diligently in requesting the postponements, and the court's denial of his motion to postpone trial effectively precluded him from challenging the State's competency and criminal responsibility findings. Appellant also argues that the court abused its discretion in denying his motion to postpone the suppression hearing. It asserts that the court considered only moving that hearing to the trial date, without considering whether other days, such as November 1, 4, or 5, 2019, were available, thereby depriving him of an opportunity to present expert testimony that his statement was involuntary because he was dissociating during the interview with Detective Beardsley.

The State contends that the circuit court properly exercised its discretion in denying appellant's motions. In denying the motions, the court noted that: (1) it previously had

granted the defense continuances; (2) it had no report suggesting that appellant was not competent but more testing was needed; and (3) defense counsel could not commit to a date for completion of a diagnosis by its expert.

B.

Standard of Review

Md. Rule 2-508(a) provides that a court, "[o]n motion of any party or on its own initiative," may "continue or postpone a trial or other proceeding as justice may require." The grant or refusal of a request for a postponement is left to the sound discretion of the trial court, and its decision in this regard will not be reversed absent an abuse of that discretion. *Abeokuto v. State*, 319 Md. 289, 329 (2006); *Prince v. State*, 216 Md. App. 178, 203, *cert. denied*, 438 Md. 741 (2014). An abuse of discretion occurs when the court acts without reference to any guiding rules or principles, or when no reasonable person would take the view adopted by the court. *Prince*, 216 Md. App. at 203–04. To show an abuse of discretion in this context, i.e., the denial of a motion for a continuance, the party requesting the continuance must show:

> (1) that he had a reasonable expectation of securing the evidence of the absent witness or witnesses within some reasonable time; (2) that the evidence was competent and material, and he believed that the case could not be fairly tried without it; and (3) that he had made diligent and proper efforts to secure the evidence.

Id. at 204 (quoting *Smith v. State*, 103 Md. App. 310, 323 (1995)).

C.

Analysis

Based on the record here, we conclude that the court did not abuse its discretion in denying appellant's motions for a continuance. Appellant failed to make the first showing necessary to find an abuse of discretion, i.e., that he "had a reasonable expectation of securing the evidence of the absent witness . . . within some reasonable time." *Prince*, 216 Md. App. at 204. Rather, as in *Prince*, the defendant offered a mere "hope" that he would be able to secure additional evidence. *Id.* Appellant acknowledged that a diagnosis of dissociative identity disorder was controversial and "very difficult," and Dr. Stefano, despite testing, had been "unable to make a diagnostic conclusion." The "only assurance" that defense counsel could give the court was that, if the court granted a postponement, appellant would be committed voluntarily, at which point the doctor could determine what was going on with appellant's seizures and dissociations.

The court noted that it had already granted two defense postponements, and it was not inclined to grant an "open-ended" series of postponements without "any end in sight."[5] Under the circumstances of this case, we cannot conclude that the court abused its discretion when it denied appellant's motion to postpone the trial.

With regard to the court's denial of appellant's motion to postpone the suppression hearing, we similarly conclude that there was no abuse of discretion. In addition to not

[5] We note that, at sentencing three months later, counsel represented that Dr. Stefano still had not made a diagnosis because appellant's "insurance [did] not allow a residential inpatient mental health evaluation," and he was unable to be committed.

being able to show a reasonable expectation of securing an expert opinion prior to the trial date, which was one week away, counsel waited until the date of the hearing to request a postponement. Moreover, counsel did not show how the evidence was competent and material to the suppression hearing. Rather, counsel stated that she wanted a postponement so they could "bring in Dr. Stefano to testify about something, I'm not sure what." The court did not abuse its discretion in denying the motion to postpone the trial and the suppression hearing.

II.

Motion to Suppress

Appellant contends that the circuit court erred in denying his motion to suppress his statement made to the police. He argues that his confession was involuntary under Maryland common law because, at the time he gave his statement, he "did not know or understand what he was saying" as a result of his mental impairment. Specifically, he did not understand "what was going on around him because he dissociated and a different personality emerged and participated in the interview."

The State contends that the circuit court properly exercised its discretion in denying appellant's motion to suppress his statement. It asserts that the record reflects that the statement was not involuntary, and during the interview, appellant "understood both what was being said to him as well as what he was saying to the police detective." The State argues that, regardless of appellant's purported mental disorder, "his demeanor, body language, and verbal responses during the police interview do not lead to the conclusion

that he was so mentally impaired" that he did not know or understand what was being said. As examples, the State points to instances throughout the interview where appellant "was articulate, deliberate, and thoughtful in his answers to the detective's questions," noting that he occasionally sought clarification of ambiguous questions.

A.

Standard of Review

In reviewing a circuit court's ruling denying a motion to suppress evidence, we consider only the evidence adduced at the suppression hearing. *Gupta v. State*, 452 Md. 103, 129 (2017). We accept the suppression court's factual findings unless they are clearly erroneous, but we "'undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.'" *Id.* (quoting *Rush v. State*, 403 Md. 68, 83 (2008)).

B.

Analysis

For a defendant's statement to be admissible against him at trial, it must be (1) voluntary under Maryland common law; (2) voluntary under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 22 of the Maryland Declaration of Rights; (3) and it must have been elicited in conformance with *Miranda v. Arizona*, 384 U.S. 436 (1966). *Williams v. State*, 219 Md. App. 295, 314 (2014), *aff'd*, 445 Md. 452 (2015). Here, appellant argues only that his statement was involuntary under Maryland common law.

"A confession is voluntary under Maryland nonconstitutional law if it is freely and voluntarily made at a time when [the defendant] knew and understood what he was saying." *Hoey v. State*, 311 Md. 473, 480–81 (1988). "The first step in determining whether a confession is voluntary under Maryland nonconstitutional law is to determine whether the defendant was mentally capable of making a confession." *Id.* at 481. "[A] defendant's mere mental deficiency is insufficient to automatically make his confession involuntary. Rather, a confession is only involuntary when the defendant, at the time of his confession, is so mentally impaired that he does not know or understand what he is saying." *Id.* at 482.

The second step in determining voluntariness under Maryland common law is to determine whether the confession was given "freely and voluntarily," i.e., that it was not "induced by force, undue influence, improper promises, or threats." *Id.* at 483. Appellant's argument does not involve this second step; he does not argue that the police used promises or threats to induce his statement or that the police were overbearing or coercive.

Several opinions from the Maryland appellate courts discuss a defendant's mental state as it relates to involuntariness of a confession. In *Hoey*, 311 Md. at 478, a defense expert testified at the suppression hearing and opined that Mr. Hoey suffered from schizophrenia, which "rendered him incapable of making a knowing, voluntary, and intelligent waiver of his rights." A police officer testified, however, that Mr. Hoey "appeared cognizant of his surroundings and responded normally to questions and directives," and the detective who interrogated him testified that Mr. Hoey "appeared to understand what was happening and answered questions responsively." *Id.* at 479. The

suppression court found as a fact that Mr. Hoey "was in a position to make his decision there freely, voluntarily, capably." *Id.* at 483. The Court of Appeals upheld that finding because "there was sufficient testimony presented at the suppression hearing" to support it. *Id.*

In *McCray v. State*, 122 Md. App. 598, 614 (1998), the defendant "appeared to be under the influence of alcohol" at the time she was interrogated. Shortly before questioning began, she "urinated on herself." *Id.* While answering the detective's questions, she "slurred her speech," but she "could stand up and walk" and "understood the questions asked of her." *Id.* We rejected Ms. McCray's contention that her statement was involuntary because of her "gross intoxication," concluding "that the testimony presented at the suppression hearing was sufficient to allow the court to conclude that [she] was mentally capable of understanding what she was saying." *Id.* at 615–16.

In *Harper v. State*, 162 Md. App. 55, 84 (2005), a police detective testified at the suppression hearing that Mr. Harper "obviously was under the influence of something," but he "seemed to understand what was being said to him and responded appropriately." Although Mr. Harper claimed "that he had been under the influence of marijuana, alcohol, and cocaine when he was interviewed" and that "he was sleep deprived," he was nonetheless able to recount "in great detail what transpired at the police station," and he had the presence of mind to use consistently a false name in an attempt to avoid being charged with a probation violation. *Id.* The motions court found that Mr. Harper "seemed to have a very clear recollection of the events that occurred," and it concluded that his

statement "was given knowingly." *Id.* We upheld that finding as not clearly erroneous. *Id.* at 85.

In this case, as in the above cases, the circuit court, after viewing the video recording of appellant's interview, found that appellant understood what the detectives said to him and what he was saying to police. The court explained that it did "did not find any evidence" that appellant was

> so overborne by his mental disorder that he could not understand what he was saying because the words themselves inherently express an understanding of the communication and even by his own statements, he was clearly able to articulate what had happened and fill in some of the holes that the detective was trying to elicit from him.

The court's finding in this regard is supported by the evidence, and it is not clearly erroneous. Accordingly, the motions court did not err in denying appellant's motion to suppress the statement on the ground that it was involuntary.

III.

Other Crimes Evidence

Appellant contends that the "circuit court erred or abused its discretion in admitting other crimes evidence." Specifically, he asserts that after the State nol prossed Count 1, addressing the May touching, evidence about the May incident was inadmissible other crimes evidence.

The State contends that the "circuit court properly exercised its discretion when it admitted evidence of the May 2018 incident." It asserts that the evidence of the May encounter was properly admitted as evidence of a continuing course of conduct between

appellant and A.A. Alternatively, it asserts that the evidence was admissible because it had special relevance to show intent, and "the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice." Finally, the State argues that, even if the court erred in admitting other crimes evidence, the error was harmless.

Evidence of uncharged crimes generally is inadmissible in a criminal trial "to prove the character of a person in order to show action in the conformity therewith." Md. Rule 5-404(b). "'The primary concern underlying the Rule is a fear that jurors will conclude from evidence of other bad acts that the defendant is a bad person and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking.'" *Winston v. State*, 235 Md. App. 540, 562 (quoting *Hurst v. State*, 400 Md. 397, 407 (2007)), *cert. denied*, 458 Md. 593, *and cert. dismissed*, 461 Md. 509 (2018). Evidence of other crimes is admissible, however, in some circumstances where the evidence is "specially relevant to a contested issue" other than propensity, "'such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident.'" *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Md. Rule 5-404(b)).

As indicated, the State argues that an "other crimes" analysis is not required here. As the State notes, the rules regarding "other crimes" evidence do not apply to evidence of crimes "that arise during the same transaction and are intrinsic to the charged crime or crimes." *Odum v. State*, 412 Md. 593, 611 (2010). Crimes are "intrinsic" if they are "so connected or blended in point of time or circumstances with the crime or crimes charged

that they form a single transaction, and the crime or crimes charged cannot be fully shown or explained without evidence of the other crimes." *Id.*

Here, the prosecutor argued below, and the circuit court concluded that based on *Odum*, the evidence regarding the May touching was admissible. On appeal, the State continues to argue that evidence regarding the May touching was evidence of a "continuing course of conduct" and not other crimes evidence because it showed "the relationship and sexual history between [appellant] and [A.A]." We disagree.

Unlike in *Odum*, where the robbery, carjacking, and murders arose out of the same criminal episode as the kidnapping for which Mr. Odum was on trial, *id.* at 613–14, the May and July encounters were two separate offenses, separated by two months. The May touching was not "so connected or blended in point of time or circumstances with" the July incident as to form "one transaction." *Id.* at 614. Thus, the two incidents did not constitute a continuing course of conduct, and we must consider the admissibility of the May incident under the analysis for other crimes evidence.

There is a three-step analysis in assessing the admissibility of other crimes evidence. First, the court must determine whether the proffered evidence falls within one of the categories listed in Rule 5-404(b), "or otherwise [has] special relevance to some contested issue in the case." *Thomas v. State*, 213 Md. App. 388, 410 (2013), *cert. denied*, 437 Md. 640 (2014). Second, if the proffered evidence satisfies the first step of the analysis, the court then "must find that the accused's involvement in the other crimes is established by clear and convincing evidence." *Id.* at 410–11. Finally, if the first two steps are satisfied,

the court must weigh the probative value of the evidence against its potential for unfair prejudice. *Id.* at 411.

A trial court's ruling on the first step (whether the evidence has special relevance) is a legal question that we review without deference. *State v. Westpoint*, 404 Md. 455, 489–90 (2008). We review a ruling on the second step for "'whether the evidence was sufficient to support the trial judge's finding.'" *Thomas*, 213 Md. App. at 411 (quoting *State v. Faulkner*, 314 Md. 630, 635 (1989)). Finally, we review a trial court's ruling on the third step for abuse of discretion. *Id.*

Here, the circuit court ruled that the contested evidence was admissible under *Odum* as a continuing course of conduct, and it did not consider whether evidence of the May touching was admissible as other crimes evidence. Nevertheless, we can uphold the court's decision to admit evidence of the May touching if there is adequate support in the record to do so on an alternative ground. *See Barrett v. State*, 234 Md. App. 653, 665 (2017), *cert. denied*, 457 Md. 401 (2018). As explained below, we conclude that the evidence was admissible.

With respect to the first prong, the State contends that the May 2018 incident was relevant to prove appellant's intent. It notes that appellant's defense was that he was not criminally responsible, and it asserts that evidence of the May incident was relevant to show that, when appellant acted in July 2018, "he did so intentionally, notwithstanding any mental illness or altered state." We agree. Given that his defense was that he was not criminally responsible and his counsel argued that his behavior was "odd" and he was in

"mental distress," we conclude that the evidence of the May incident bore "special relevance" of his intent to engage in a sexual act with a minor.

The second prong of the analysis addresses whether "the accused's involvement in the other crimes is established by clear and convincing evidence." *Thomas*, 215 Md. App. at 410–11. Appellant admitted to the May touching, and therefore, he concedes that there was clear and convincing evidence of his involvement with the crime. Accordingly, the second prong of the analysis is also satisfied.

We thus turn to the third prong, whether the probative value of the contested evidence was substantially outweighed by the danger of unfair prejudice. *Id.* at 411. Evidence of the May touching tended to show that appellant acted knowingly and intentionally when he engaged in fellatio in July of the same year, contrary to his defense that he was incapable of appreciating the criminality of his conduct. Although it was prejudicial to appellant, it did not outweigh the probative value of the evidence to show, as the State asserts, that he "knew what he was doing when he chose to engage in sexual activity with an underaged girl." Thus, the evidence was admissible under the analysis for admissibility of other crimes evidence.

Finally, even if we were to conclude that the circuit court erred or abused its discretion in admitting evidence of the May touching, we would hold that any error was harmless beyond a reasonable doubt. An error is harmless if "'there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—

may have contributed to the rendition of the guilty verdict.'" *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

Here, there was no dispute that the sexual offense of fellatio occurred in July 2018. Not only did A.A. testify that it occurred, but the jury heard appellant's own voluntary admission that he had engaged in fellatio with A.A. As the United States Supreme Court has observed, "the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991).

Thus, even if we were persuaded that the trial court should have excluded evidence of the May touching, any error had no influence on the jury's verdict, and therefore, it was harmless error that does not require the reversal of appellant's conviction.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.