Circuit Court for Harford County
Case No. C-12-CR-19-001255

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 627

September Term, 2023

DEVON ALLEN ODELL SCOTT

v.

STATE OF MARYLAND

Ripken,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: July 29, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In February of 2023, a jury in the Circuit Court for Harford County found Devon Scott ("Appellant") guilty of a series of offenses[1] stemming from 2019 events in which Appellant was charged with multiple crimes including the rape and robbery of the victim ("D.") at gunpoint.[2] The court imposed a life sentence for the crime of first-degree rape, and an aggregate additional sentence on the other counts in excess of 40 years consecutive to the life sentence. Appellant noted a timely appeal. For the following reasons, we affirm.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for our review:[3]

I. To the extent preserved, whether the circuit court abused its discretion by permitting a rebuttal witness to testify.

II. To the extent preserved, whether the circuit court impermissibly considered a series of defense postponements at sentencing.

FACTUAL AND PROCEDURAL BACKGROUND

In August of 2019, as D. was driving in Baltimore City, D. gave Appellant a ride in D.'s vehicle with the intention of receiving a monetary payment in exchange for the ride. At Appellant's direction, D. drove him to an address in Harford County. After D. stopped

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[1] Appellant was found guilty of first-degree rape, armed robbery, first-degree assault, use of a firearm during a felony or crime of violence, illegal possession of a regulated firearm, possession of a handgun in a vehicle, false imprisonment, indecent exposure, and theft of property from $100 to under $1500.

[2] To protect the anonymity of the victim, we refer to the victim using the randomly assigned initial "D."

[3] Rephrased from:

1. Did the trial court abuse its discretion in permitting the State to present improper rebuttal evidence?
2. Did the trial court rely on impermissible considerations at sentencing?

the car at the location Appellant provided, Appellant produced a gun. D. testified that Appellant took D.'s money, keys, and other personal items at gunpoint. Appellant, still holding the handgun, repeatedly hit D. and forced D. to perform fellatio on him. D. testified that after the assault concluded, Appellant left the car, taking D.'s personal effects with him. Once Appellant was out of sight, D. left the vehicle, flagged down a passing motorist, and reported the incident to the police. D. later identified Appellant as the man who assaulted D., both in a photo array and then again at trial.

At trial, Appellant admitted to having sexual contact with D., but asserted that the encounter had been consensual. According to Appellant's testimony, after D. picked him up in D.'s vehicle, he offered D. money in return for sexual services, which D. accepted. Appellant denied possessing a firearm or striking D. In Appellant's version of events, the conflict arose when he asked for the return of some of his money, which D. refused to provide. The jury clearly did not find Appellant's testimony credible and found Appellant guilty on all counts.

DISCUSSION

I. APPELLANT'S CONTENTION THAT THE COURT ERRED BY ALLOWING A REBUTTAL WITNESS TO TESTIFY IS NOT PRESERVED FOR OUR REVIEW.

While testifying in his own defense, Appellant made the following statement:

> I just want to say I'm not a rapist. That's the worst thing you can (indiscernible). I've got my grandmother in the courtroom, my mother and four aunts. I was raised by all women. That's the lowest form of a crime a man [can] commit on another woman. Only thing I'm guilty of is you know, like I said, I'm not going to lie, I found the woman attractive. I got paid that day. I had money. My motive was to go home. But you know, I ran into a female with a good conversation who was looking for money. So maybe that was the underlying effect. The door opened right there.

Subsequently, during cross-examination, the following interaction occurred:

> [THE STATE]: Now, [Appellant], you indicated that rape is the lowest form, that you have female relatives, you would never do such a thing. Because you don't like taking things from people. Isn't that correct?
>
> [APPELLANT]: Absolutely.
>
> [THE STATE]: And you don't take things - -
>
> [APPELLANT]: I don't rape women.
>
> [THE STATE]: You don't rape women, but you take other things. But you take other things from people. Isn't that correct?
>
> [APPELLANT]: Explain?
>
> [THE STATE]: You take objects, you take money from other people, don't you?
>
> [APPELLANT]: I may accept it.
>
> [THE STATE]: No, you take them by force.
>
> [APPELLANT]: No.
>
> [THE STATE]: You've never done that?
>
> [APPELLANT]: Have I taken something by force?
>
> [THE STATE]: Yes.
>
> [APPELLANT]: That I can recall of in my past, that's in my past.
>
> [THE STATE]: In the past, you have taken things by force[?]
>
> [APPELLANT]: Yes, ma'am.
>
> * * *
>
> [THE STATE]: So sir, in the past, you have taken things by force. Isn't this correct?

> [APPELLANT]: Yes ma'am.
>
> [THE STATE]: And in the past, you've taken things by force using a gun, isn't that correct?
>
> [APPELLANT]: Yes, ma'am. If I needed some money that bad I probably have.
>
> * * *
>
> [THE STATE]: But you don't do that anymore. Is that correct?
>
> [APPELLANT]: No, absolutely not. I don't need to.
>
> [THE STATE]: So, since you don't need to do that anymore. So as of 2019, when this incident happened, you didn't take things by force anymore.
>
> [APPELLANT]: I just had money deposited in my account. It's legal information. It's public information now. I'm not looking for no money right now. I was working. I got a support system.
>
> [THE STATE]: Okay, so my question to you sir in 2019 you didn't take things by force from people?
>
> [APPELLANT]: No, ma'am.
>
> [THE STATE]: And in 2020 you didn't take things by force [from] people. Isn't that correct?
>
> [APPELLANT]: Impossible.
>
> [THE STATE]: And in 2021 you didn't take things from people by force? Is that correct?
>
> [APPELLANT]: Extremely impossible.

Once the defense rested its case, the State indicated that it would be presenting a rebuttal witness ("J."), who was alleged to have been the victim of a separate carjacking

perpetrated by Appellant in 2019.[4] At the time of trial, while Appellant had been charged with carjacking J., that case remained pending. Defense counsel objected to the introduction of J. as a rebuttal witness, stating that J.'s testimony would be "wildly prejudicial without any probative value." According to defense counsel, Appellant "said he had done things in the past, [but] he ha[d] not been convicted of anything with regards to this particular case."

The State averred that it had been "very specific with [its] cross-examination questions[.]" The State argued that Appellant had admitted that he had taken things in the past by force, but specifically denied doing so in 2019. Therefore, in the State's view, J.'s testimony that Appellant had carjacked her in 2019 was valid rebuttal evidence.[5]

The court permitted the rebuttal testimony, observing that the cross-examination was "very specific as to the years and as to the crime." The court exercised its discretion in determining that "[t]his is permissible and acceptable rebuttal, and the [c]ourt finds that although it is prejudicial, its probative value outweighs the prejudicial nature of the testimony and the evidence[.]" The court also found that the testimony was "not impeachment of . . . something that's a collateral issue. It's directly on point with the defendant's testimony where he specifically denied ever having taken anything by force from another person . . . . And so this is to rebut that testimony." Thus, the court allowed

[4] To preserve the anonymity of the alleged victim, we refer to that person by the randomly assigned initial "J."

[5] The State also observed that Appellant was represented by the same defense attorney in both cases, and "I'm sure [Appellant] was advised by [defense counsel] what questions I could possibly ask while he was on the stand."

J. to testify as a rebuttal witness.[6] Defense counsel did not lodge any subsequent objection to the testimony.

J. testified that in September of 2019, as J. was sitting in her vehicle after leaving a grocery store, a man she had never seen before opened her car door, sat in the passenger seat, and threatened to shoot J. if she attempted to run. J. identified the perpetrator as Appellant. J. asserted that Appellant ordered her to drive to a dead-end street, and while in transit, produced a long kitchen knife. J. testified that after she parked her vehicle at the dead end, Appellant began "ask[ing] [her] multiple random questions about if [she] had children, what [her] name was[,]" after which, they "sat there quietly." At this point, J. stated she saw "in [her] peripheral that [Appellant] was trying to unbutton his pants" which prompted her to escape from the vehicle and run away. Following a brief cross-examination, J. was excused, the parties presented closing arguments, and the case was submitted to the jury for deliberation.

A. Parties' Contentions

Appellant asserts that the trial court abused its discretion by permitting the State to present improper rebuttal evidence in the form of witness testimony regarding an alleged carjacking by Appellant. Appellant contends that the rebuttal evidence was impermissible because the testimony "did not explain, reply, or contradict any new matter 'brought into

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[6] Defense counsel also notified the court that contrary to normal witness sequestration procedures, J. had observed some trial testimony. The State indicated that it had not intended for J. to be prematurely present in the courtroom. The court "overrule[d] the objection on that basis as well[,]" and allowed J. to testify as a rebuttal witness. This issue was not raised on appeal.

the case by'" the defense, as it was the State who raised the matter during cross-examination of Appellant. *Wright v. State*, 349 Md. 334, 342–43 (1998) (quoting *State v. Hepple*, 279 Md. 265, 270 (1977)). Further, Appellant argues that the testimony was "highly inflammatory other crimes evidence" that should have been excluded.

The State preliminarily contends that Appellant's challenge is not preserved for review because Appellant objected in the trial court on different grounds, specifically that the rebuttal testimony would be more prejudicial than probative. In the alternative, the State asserts that the court properly exercised its discretion to permit the rebuttal testimony because it is permissible for the State to elicit a new matter on cross-examination such that rebuttal evidence is warranted.

B. Standard of Review

This Court reviews the introduction of rebuttal evidence for an abuse of discretion because "what constitutes rebuttal evidence in a criminal prosecution is a matter resting in the sound discretion of the trial court[.]" *Mayson v. State*, 238 Md. 283, 289 (1965) (citing *Lane v. State*, 226 Md. 81, 90 (1961)). We will reverse a court's ruling only when the court's application of its discretion was "manifestly wrong and substantially injurious[.]" *Huffington v. State*, 295 Md. 1, 14 (1982).

C. Analysis

Pursuant to Maryland Rule 8-131, this Court will generally "not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a); *see also Robinson v. State*, 410 Md. 91, 103 (2009). By requiring an

issue to have been raised in or decided by the trial court, the Rule serves two purposes—to "ensur[e] fairness to all parties" and to "promot[e] . . . the orderly administration of the law." *Boulden v. State*, 414 Md. 284, 297 (2010). When an objection is properly lodged during a court proceeding, the trial court is provided the opportunity to explain its decision or consider "and possibly correct any errors in the proceedings[.]" *Clayman v. Prince George's County*, 266 Md. 409, 416 (1972); *Bazzle v. State*, 426 Md. 541, 562 (2012).

Additionally, it is "well-settled" that when a party objects on specific grounds at trial, "the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999). An objection must be "sufficiently definite as to fairly alert the trial court to the nature of the issue that it is being called upon to correct." *Smith v. State*, 259 Md. App. 622, 647–48 (2023). Abrogation of this principle would "require trial courts to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility." *Sifrit v. State*, 383 Md. 116, 136 (2004).

Rebuttal evidence is "any competent evidence which explains, or is a direct reply to, or a contradiction of, material evidence introduced by the accused[.]" *Lane*, 226 Md. at 90. It is "designed solely to address new matters or facts introduced by the defendant during the defendant's case, that evidence ordinarily would have been inadmissible, as irrelevant, in the plaintiff/State's case-in-chief, for, at that stage, there would have been nothing to rebut." *Wright*, 349 Md. at 343. Whether rebuttal evidence is permissible thus falls within the discretion of the trial court, which must determine whether the alleged rebuttal evidence

explains, responds, or contradicts a new matter or fact brought out during the defense case. *See State v. Hepple*, 279 Md. 265, 271–72 (1977); *Scarborough v. State*, 50 Md. App. 276, 284–85 (1981). While a new matter of fact or issue is generally brought out during the defense's presentation of the case, this Court has concluded that it is permissible for an issue or matter raised by the State on cross-examination to constitute a new issue or matter such that rebuttal evidence is permissible. *Hardaway v. State*, 72 Md. App. 592, 602 (1987), *overturned on other grounds*, 317 Md. 160 (1989); *see also Scarborough*, 50 Md. App. at 284–85.

Here, Appellant objected to the introduction of J. as a rebuttal witness, and when asked for the basis of the objection, stated that "it's wildly prejudicial without any probative value." By advancing specific grounds for his objection, Appellant failed to preserve for our review the alternate grounds for precluding J.'s testimony that he now asserts, namely that rebuttal evidence is improper unless the defense "established on direct examination the foundation for the State's rebuttal evidence[.]" *See Sifrit*, 383 Md. at 136.

Appellant contends that although his objection at trial asserted a different theory of exclusion from the position he now advances on appeal, his contention is nevertheless preserved for our review because the matter was raised in and decided by the court below. In Appellant's view, because the State explained to the trial court why it believed the testimony was proper, and the court agreed that J.'s testimony was "acceptable rebuttal," the preservation requirement of Rule 8-131(a) was met notwithstanding the fact that Appellant did not challenge either the State's commentary or the court's finding regarding

the propriety of J.'s testimony as a rebuttal witness. We disagree. As the Supreme Court of Maryland has explained, an "issue" does not "arise" within the meaning of Rule 8-131(a) until a point becomes *disputed* between the two parties. *See Ray v. State*, 435 Md. 1, 20–22 (2013) (explaining that when a defense attorney failed to dispute a prosecutor's comment that probable cause existed for an arrest, the undisputed lawfulness of the arrest "did not become an issue as the term is contemplated by Rule 8-131(a)").

Here, the State asserted that J. could properly testify to rebut Appellant's statements during cross-examination, and the court, hearing no disagreement from Appellant on that basis, agreed. If Appellant wished to preserve an argument to the contrary for our review, he was required to lodge an objection to afford the trial court the opportunity to weigh the parties' contentions and reach a decision. *See Clayman*, 266 Md. at 416. Because Appellant's specific grounds for objection at trial are unrelated to the theory he now advances on appeal, his assertion that J. was an improper rebuttal witness was not preserved for our review. *Klauenberg*, 355 Md. at 541. For the same reason, the issue was not "decided" by the trial court, as neither party raised, nor did the court rule upon, Appellant's argument that "for a witness to properly testify in rebuttal to the defendant's testimony, the defense must have established on direct examination the foundation for the State's rebuttal evidence[.]" *See Ray*, 435 Md. at 21.

Even if the issue was preserved for our review, we could not conclude that the court abused its discretion and was "manifestly wrong" when it permitted the State to introduce as rebuttal evidence J's testimony regarding an alleged carjacking committed by Appellant

in 2019. *See Huffington*, 295 Md. at 14 ("Our cases are clear that the question of what constitutes rebuttal testimony rests within the sound discretion of the trial court, and that the court's ruling should be reversed only where shown to be both manifestly wrong and substantially injurious." (internal quotation marks and citation omitted)). During cross-examination, the State elicited a new matter when Appellant denied forcefully taking anything in 2019. *See Scarborough*, 50 Md. App. at 284–85. Thus, the court was within its discretion to permit the State to introduce J's testimony as rebuttal to directly contradict Appellant's claim that he did not take anything by force in 2019.

II. APPELLANT'S CONTENTION THAT THE COURT RELIED ON IMPERMISSIBLE CONSIDERATIONS AT SENTENCING IS NOT PRESERVED FOR OUR REVIEW.

After presentation from both sides at the sentencing hearing, the court explained that it had three considerations to make when determining a sentence, (1) rehabilitation, (2) punishment, and (3) "protecting the community." Having reviewed Appellant's prior criminal history provided in the pre-sentence investigation report and in the State's recitation of such, the court noted that Appellant was not a candidate for rehabilitation.[7] The court then explained that based on Appellant's record, the court had an "overwhelming" obligation to protect the community from Appellant. The court further emphasized that Appellant is "someone who the [c]ourt believes poses an incredible threat to the safety of this community."

[7] Appellant had been convicted of multiple violent crimes spanning two decades including armed robbery, robbery, assault as well as weapons violations. The court also specifically identified a conviction for an incident that occurred while Appellant was incarcerated, noting that it "speaks volumes to the [c]ourt as to how dangerous . . . and how violent [Appellant] really [is]."

While explaining the rationale for finding Appellant to be a danger to the community, the court noted the trauma Appellant caused the victim and referenced the multiple delays in the proceedings.

> [Y]ou committed what is probably in the [c]ourt's mind one of the worst crimes you could possibly commit. You left this victim traumatized. The trauma was obvious during her testimony. And the other factor is this occurred in 2019 and did not go to trial until 2023, largely because it was postponed by you numerous times. And so that very likely is what caused - - don't speak, it's my turn now - - That very likely is what contributed to the victim's continuing trauma and her desire just to be finished with the case. I admire her courage coming forward, coming into court to testify as to what happened to her.

The court then proceeded to summarize its findings, noting that Appellant's criminal history "leads the [c]ourt to conclude that you are a violent person and you are a threat and a danger to the safety of this community." The court then announced Appellant's sentence.

A. Parties' Contentions

Appellant asserts that the trial court relied on impermissible considerations during the sentencing hearing, namely that the court "blamed the trauma endured by [D.] in this case, in part, on the multiple defense postponements of the trial date[.]" As such, Appellant argues the case should be remanded for resentencing.

Preliminarily, the State contends that the issue is not preserved for appellate review because Appellant failed to lodge an objection to the court's alleged improper statement during the sentencing hearing. In the alternative, the State argues that although the court made "a single, isolated reference in passing" to the impact of the postponements in the case on D., the court dedicated "multiple pages of transcript" to explaining that the sentence

was a result of the court finding that Appellant was a danger to the community. Specifically, the State argues that the court properly came to the sentencing determination after considering Appellant's "criminal history and propensity for violence[,]" both permissible factors when determining the length of a sentence.

B. Standard of Review

The Supreme Court of Maryland has repeatedly affirmed that trial courts have broad discretion to "devis[e] an appropriate sentence" for a defendant, *Cruz-Quintanilla v. State*, 455 Md. 35, 40 (2017), so that the court can "best accomplish the objectives of sentencing—punishment, deterrence and rehabilitation." *Poe v. State*, 341 Md. 523, 531 (1996) (quotation marks and citation omitted). When making a sentencing determination, courts are permitted to consider the defendant's "'reputation, prior offenses, health, habits, mental and moral propensities, and social background.'" *Jackson v. State*, 364 Md. 192, 199 (2001) (quoting *Poe*, 341 at 532).

Accordingly, one of the three grounds for appellate review of a sentence is "whether the sentencing judge was motivated by ill-will, prejudice, or other impermissible considerations." *Id.* at 200; *see also Sharp v. State*, 446 Md. 669, 685 (2016). Due to the wide discretion afforded to the trial court when crafting an appropriate sentence for a defendant, this Court will not disturb a trial court's sentencing determination absent an abuse of discretion. *Howard v. State*, 232 Md. App. 125, 175 (2017); *accord Cruz-Quintanilla*, 455 Md. at 41.

C. Analysis

An argument asserting an impermissible consideration by the trial court in a

sentencing hearing is only preserved for this Court's review when the issue has been raised in or decided by the trial court. *See Bailey v. State*, 464 Md. 685, 697–98 (2019); *see also supra*, Section I. Yet, appellate courts are vested with discretion such that this Court may review an issue not raised in or decided by the trial court "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). This discretion is identified as the plain error doctrine and is used only in rare occurrences because

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007); *see also State v. Newton*, 230 Md. App. 241, 272 (2016). Thus, it is reserved for errors that are "compelling, extraordinary, exceptional, or fundamental to assure the defendant of a fair trial."[8] *Newton v. State*, 455 Md. 341, 364

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[8] The Supreme Court of Maryland has identified four conditions that must be met for an error to be so compelling or exceptional that it warrants review. *See State v. Rich*, 415 Md. 567, 578 (2010).

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Newton, 455 Md. at 364 (quoting *Rich*, 415 Md. at 578) (internal quotation marks and brackets omitted).

(2017) (quoting *Robinson*, 410 Md. at 111).

Appellant concedes that he did not object to the court's statement regarding the delay of the trial and its impact on the victim during the sentencing hearing. Yet, Appellant argues that the statement constitutes plain error such that this Court should exercise its discretion to review the impact of the "grossly unfair and inappropriate" statement on Appellant's sentence. Appellant's claim of plain error, however, is not persuasive.

The trial court explained the basis for the sentencing decision on the record in a detailed explanation finding that Appellant is "someone who the [c]ourt believes poses an incredible threat to the safety of this community" and is not a candidate for rehabilitation. In so finding, the court clearly addressed Appellant's lengthy criminal history, the conclusions it drew from that criminal history and his propensity for violence. While the court made a brief interlude to discuss the trauma this incident has caused the victim, which included noting the length of the litigation due to numerous postponements, the record before us does not support a conclusion that the statement by the court constituted an obvious legal error not subject to reasonable dispute that affected the outcome of the determination. *See Newton*, 455 Md. at 364. Thus, we decline to exercise our discretion to review Appellant's unpreserved contention that the trial court made an impermissible sentencing consideration.

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