Circuit Court for Montgomery County
Case No. 133463C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3169

September Term, 2018

JONATHAN MANCIA-GARCIA

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 13, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted by a jury in the Circuit Court for Montgomery County of sexual abuse of a minor and second degree sexual offense, Jonathan Mancia-Garcia ("Mr. Mancia"), appellant, presents for our review a single question: Did the court err in responding to a question from the jury during deliberations? For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called I.M., whose mother is Mr. Mancia's cousin, and who at the time of trial was thirteen years old. I.M. testified that when he was eleven years old, he would go to his grandmother's home after school, "eat some food[,] and then . . . go outside for a walk." Mr. Mancia "sometimes" lived with I.M.'s grandmother, and had a room "[d]ownstairs in the basement." On the day of the offenses, I.M. went "downstairs to [Mr. Mancia's] room," where "he was . . . watching a movie." I.M. asked to "play on [Mr. Mancia's] phone," and he agreed. Mr. Mancia then told I.M. to take his pants off, after which Mr. Mancia "put his pants down" and "put his penis inside" I.M.'s "butt." I.M. testified:

> . . . I was telling him a million times to stop and then he couldn't stop. So, like I was trying to push him like back so I can – so he can, so he can get the penis out of me. And I went toward the wall and pushed on him. Then I just went out and then something came out of me. But I don't know what was in from my butt. I don't know if it's from my stomach or something.
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> * * *
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> . . . I couldn't see it, but it looked like white or something. But it came out of me. And after that I just went and ran and went out of his room and just went upstairs . . . .

The State also called Montgomery County Police Officer Rosa Luyo, who testified that she "became involved in" Mr. Mancia's case when she "was asked to assist" the

arresting officer by "translating for the call." Officer Luyo accompanied Mr. Mancia to the "Special Victims Office," where the officer translated for a detective named Hays[1] as he interviewed Mr. Mancia. During the interview, Detective Hays stated, and Officer Luyo translated: "The quicker that everyone is honest, the quicker that we all can be done with our day today." When Detective Hays stated that I.M. said that Mr. Mancia had "put [his] penis in [I.M.'s] butt," Mr. Mancia replied that he "[n]ever did that." Later, Detective Hays stated: "I already know that it went in. I just want to know how long it had been there?" Mr. Mancia replied: "It was only a minute and a half." Mr. Mancia also stated that he ejaculated "outside" I.M.'s buttocks "[o]n the floor," and that he had "put [his] penis in [I.M.'s] butt" on a second occasion.

Following the close of the evidence, the court instructed the jury, in pertinent part:

> You have heard evidence that the defendant made a statement to the police about the crime charged[.] You must first determine whether the defendant made a statement. If you find the defendant made a statement then you must decide whether the statement [sic] proved that beyond a reasonable doubt that statement was voluntarily made. A voluntary statement is one that under all circumstances is given freely.
>
> To be voluntary[,] a statement must not have been compelled or obtained as a result of any force, promise, threat, inducement[,] or offer of reward.
>
> If you find that the police used force or threat or promise of inducement or offer of reward in obtaining the defendant's statement then you must find that the statement was involuntary and disregard it unless the State has proven beyond a reasonable doubt that the force direct [sic], promise of [sic] inducement, offer of reward did not in any way cause the defendant to make the statement. You [sic] do not exclude the statement for

[1]Elsewhere in the transcript of trial, this detective is identified as "Hayes." For consistency, we shall identify him as Detective Hays.

one of these reasons but you must decide whether it was voluntary under the circumstances.

* * *

If you find beyond a reasonable doubt that the statement was voluntary[,] give it such weight as you believe it deserves. If you do not find that beyond a reasonable doubt that the statement was voluntary[,] you must disregard it.

During closing argument, defense counsel stated, in pertinent part:

> This individual who had never – nobody knows that had ever been in a situation like that, a nervous situation being asked questions already knowing you're not going home, a detective telling him, let's get this done quick so we can get this out of here. You can use your everyday life experiences. You can use your common sense. You never been in that situation of course you're going to tell them what they want to hear. Get this out, hopefully I can go home to my family. Because as soon as they told him what they wanted to hear, interview over.

During deliberations, the jury sent to the court a note in which they asked: "Can we have the legal definition of the word[s] 'inducement' and 'promise.'" Defense counsel stated that he wanted to "get the . . . dictionary [definitions] for inducement and promise." The court recessed so that the parties could "do . . . research." During the recess, the jury sent to the court a second note in which they asked: "Are you bringing us definitions of inducement and promise? Should we go ahead without[?]" Defense counsel asked the court to instruct the jury that a "thing that persuades or influences someone to do something . . . is an inducement, and a promise is a declaration or assurance that one will do a particular thing, or that a particular thing will happen." The following colloquy then occurred:

> THE COURT: So that's their common everyday meaning.
>
> [DEFENSE COUNSEL]: And that's what I believe they were asking for, what does inducement or promise mean, and I think that's what should

> go back. But I definitely would argue and object to anything mentioning of improper inducement or that quote that the State sent back, because that's not what they asked for.
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> THE COURT: Well, I don't think I can send it back, because it's more compilation of what past cases have included. It's not a declaration of this is the law. Again, it's all been very squishy in this area, and I am not pleased with this instruction, but there's nothing I can do about it at this point right now. So I'll just let them know that they can use their everyday understanding of those words, that there's no, I am not aware of any special legal connotations to put on those words. But anybody else doesn't have anything else to say, I'll –
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> [DEFENSE COUNSEL]: I would ask that Your Honor place in there what the definition of inducement or promise is.
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> THE COURT: That's the whole reason we don't give them dictionaries in the jury's room.
>
> [DEFENSE COUNSEL]: Well, I'm just asking the [c]ourt to do it, but if Your Honor is not inclined, just –
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: – their common sense of what inducement or promise means.

The court ultimately instructed the jury: "[Y]ou must give the words in the instructions the common and everyday meaning that they have in normal usage." The jury subsequently convicted Mr. Mancia of the offenses.

Mr. Mancia contends that the "court erred when it refused to provide the jury the proposed dictionary definitions of these terms," because "there is a danger that the jury was left to speculate on their meaning and either misapplied them or did not apply them at all." Mr. Mancia further contends that the State cannot "prove that [the] error is harmless," because the "other evidence against [him] was not strong," and his "statement likely

substantially swayed the jury toward conviction." The State counters that Mr. Mancia's "claim is not preserved" (boldface omitted), because he "expressly agreed with the court's course of action." Alternatively, the State contends that "there was no abuse of discretion by the . . . court in its response" (boldface omitted), and any error "was harmless because the issue of an improper inducement or promise was not generated for the jury's consideration." (Capitalization omitted.)

We agree with Mr. Mancia that his contention is preserved for our review. Rule 4-323(c) states that "[f]or purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Also, we have stated that an issue is preserved "where the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it[.]" *Jones v. State*, 240 Md. App. 26, 36 (2019) (internal citation and quotations omitted). Here, the transcript reflects that Mr. Mancia repeatedly made known to the court his desire that the court submit to the jury his preferred definitions of inducement and promise, and that the court understood and rejected the objection. Hence, the issue is preserved for our review.

Nevertheless, we conclude that the court's response was appropriate. We have stated that "[w]hen the meaning of a term" such as "'place,' 'harbor,' 'prostitution,' [or] 'knowingly,'" is "implicit and clear, a trial court's decision of whether to define the term in an instruction is discretionary." *Lindsay v. State*, 235 Md. App. 299, 333 (2018) (citations and quotations omitted). Here, the meanings of "inducement" and "promise,"

like the meanings of the terms in *Lindsay*, are implicit and clear. The court was not required to further define the terms, and hence, the court did not err in responding to the jury's question.

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