Circuit Court for Worcester County
Case No. C-23-CR-18-000234

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 90

September Term, 2019

MAX ARTHUR SCHINDLER

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Gould,

JJ.

PER CURIAM

Filed: April 10, 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 Worcester County of first and second degree assault, Max Arthur Schindler, appellant, presents for our review two questions:

> 1. Is the evidence sufficient to sustain the conviction for first degree assault?
>
> 2. Did the court abuse its discretion in allowing the prosecutor to ask a question of a State's witness on a matter that had been asked and answered?

For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Peter Roberts, who testified that at approximately 3:30 a.m. on June 3, 2018, he was near the intersection of 12th Street and Philadelphia Avenue in Ocean City when he "noticed a lady," later identified as Paulette Wright, "in distress, and . . . calling out, like she was in a lot of trouble." Mr. Roberts "turned [down] that street" and observed Ms. Wright arguing with a man whom Mr. Roberts identified in court as Mr. Schindler. When Mr. Roberts "engaged in what was happening," Mr. Schindler "verbally assault[ed]" Mr. Roberts. Mr. Schindler then dragged Ms. Wright "along the street, basically pulling her along while she was on the ground." Ms. Wright "couldn't get up," and Mr. Schindler "kept on pulling her, pushing her to the ground."

When Ms. Wright "finally got loose," she ran "up the street to grab a [metal] flagpole . . . to defend herself." Mr. Schindler "ripped [the pole] out of [Ms. Wright's] hands," "got her to the ground," and used the pole

> like a baseball, hitting like overtop of – swinging above his shoulder, down into her – into her body with a lot of force. . . . . She was basically getting attacked over the head with a metal pole. Then it let on to some jabs definitely to her body.

Mr. Schindler then dropped the pole, placed his "hands directly to [Ms. Wright's] throat," and "chok[ed] her around the neck" for approximately seven to ten seconds. Ms. Wright "managed to break free" and ran up the street, followed by Mr. Schindler. Mr. Roberts thereafter saw "cops . . . on the way."

The State next called Joseph Wightman, who testified that he also witnessed the assault. From a distance of approximately forty to fifty yards, Mr. Wightman saw a man, whom Mr. Wightman identified in court as Mr. Schindler, "with his arm around [Ms. Wright's] neck." Ms. Wright then "picked [a pole] up" and "used [it] in like a defense type of way." Mr. Schindler took the pole from Ms. Wright and "used [it] as like a jabbing motion, jabbing or . . . trying to like hit." As Ms. Wright was "lying on her back," Mr. Schindler struck her approximately "four or five times" with the pole. Ms. Wright "got[] up and ran down the street . . . about another 20 yards." Mr. Schindler "chased her down[,] tackled her to the ground," and placed his "hands around [Ms. Wright's] neck in . . . sort of like a choking way." Mr. Schindler choked Ms. Wright for approximately thirty seconds, then "dragged [her] to the other side of the road." After Mr. Wightman and a "security officer" approached the couple to "observ[e] the situation," police arrived.

The State also called Ocean City Police Officer Tyler Sheffy, who testified that "shortly after" 3:30 a.m. on June 3, 2018, he was "directed to the 200 block of 12th Street," and made contact with Mr. Schindler. Officer Sheffy subsequently made contact with Ms. Wright and "observed several injuries on [Ms.] Wright's body," including "cuts, places where skin was missing and fresh blood on [Ms.] Wright's left kneecap and legs," "one deep scratch mark and blood on [Ms.] Wright's right shoulder blade and upper back," "a

red mark by [Ms.] Wright's right eye," and "deep red marks all over [Ms.] Wright's neck, upper chest area[,] and arms where bare skin was exposed."

Following the close of the State's case, defense counsel moved for judgment of acquittal, arguing: "Together with the testimony we've heard, a reasonable trier of fact would be required to determine between two equally-likely possibilities that would thus be precluded from such a finding beyond a reasonable doubt in this case." The court denied the motion, and the jury subsequently convicted Mr. Schindler of the offenses.

Mr. Schindler first contends that the evidence is insufficient to sustain the conviction for first degree assault, because it "cannot support a finding, beyond a reasonable doubt, that [he] acted with the specific intent to cause serious physical injury to [Ms.] Wright." We first note that, in moving for judgment of acquittal, counsel did not cite this ground with particularity. Hence, Mr. Schindler's contention is not preserved for our review. *See* Rule 4-324(a) (a "defendant shall state with particularity all reasons why the motion [for judgment of acquittal] should be granted"); *Montgomery v. State*, 206 Md. App. 357, 386 (2012) ("[f]ailure to particularize the reasons for granting a motion for judgment of acquittal in accordance with . . . Rule 4-324(a)'s requirements necessarily would result in a failure to preserve the issue for appellate review" (internal citation, quotations, and brackets omitted)).

Even if the contention was preserved for our review, Mr. Schindler would not prevail. We have stated that "[a]lthough the State must prove that an individual [charged with first degree assault] had a specific intent to cause a serious physical injury, a jury may infer the necessary intent from [the] individual's conduct and the surrounding

circumstances," and "that one intends the natural and probable consequences of his act." *Chilcoat v. State*, 155 Md. App. 394, 403 (2004) (internal citations and quotations omitted). Here, the State produced evidence that Mr. Schindler repeatedly pushed Ms. Wright to the ground, dragged and pulled her down a street while she was on the ground, repeatedly struck her with a metal object and with "a lot of force," and choked her for as long as thirty seconds. The natural and probable consequence of being repeatedly and forcefully struck with a metal object and choked for up to thirty seconds is serious physical injury. The State also produced evidence that Ms. Wright suffered injuries to her neck, eye, chest, arms, shoulder blade, upper back, legs, and kneecap. We conclude that this evidence was sufficient for the jury to infer that Mr. Schindler specifically intended to cause Ms. Wright serious physical injury, and hence, the evidence is sufficient to sustain the conviction for first degree assault.

Mr. Schindler next contends that the court "abused its discretion in allowing the prosecutor to ask a question on a matter that had been asked and answered." (Capitalization and boldface omitted.) At trial, the prosecutor asked Mr. Roberts "what, if anything, happened . . . after this 30 seconds of attacking with the flagpole." Mr. Roberts testified that Mr. Schindler "ended up chasing her up the street," and "soon after," police arrived. The prosecutor then asked: "Did you observe Mr. Schindler to make any other contact with Ms. Wright other than with . . . the flagpole?" Defense counsel objected, arguing:

> [T]he State . . . is presumably seeking to elicit an allegation that Mr. Schindler has placed his hands around Ms. Wright's neck. The cat is kind of out of the bag. The witness testified as to what he first observed when he got there, testified – previously testified as to when he walked away that was what his recollection was on the stand to the questions. Of course, he might have

> initially written something else down in what he wrote to the police, but I would ask the [c]ourt to – to – I guess I'm objecting to this question on the grounds that it had been asked and answered by the nature of his previously testimony in that – by virtue of the nature of the question that was previously asked, it reminded the witness as to something he had forgotten that wasn't initially testified to. And it would be unfair to permit him to testify now as to that after he's been reminded.
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> The court overruled the objection, stating:
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> [T]he record should be clear that [Mr. Roberts] is – he is, number one, very young, number two, is obviously extremely nervous, and the pace in which he is answering the questions is very rapid. I'm actually having difficulty making my own notes as he responds to these . . . appropriately open-ended questions.
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> You are asking, essentially, that the State not be permitted to go back and try to expound on some of these answers that were rapidly given, which I don't think is fair to the State under these circumstances with this particular witness.

Mr. Roberts subsequently testified that Mr. Schindler dropped the pole, placed his "hands directly to [Ms. Wright's] throat," and "chok[ed] her around the neck" for approximately seven to ten seconds.

Mr. Schindler contends that because "[t]here was no issue of fairness to the State that justified the court's ruling," and Mr. Roberts was "by all accounts an adult with a fully functioning cognitive capacity" who "clearly said all he had to say about the alleged assault when he ended his narrative answer," the court abused its discretion in allowing the testimony. We disagree. Rule 5-611(a) authorizes the court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence" not only to "protect witnesses from harassment or undue embarrassment," but also to "make the interrogation and presentation effective for the ascertainment of the truth." Here, the court

concluded that additional examination of Mr. Roberts was permissible in light of his nervousness and rapid manner of speech. There is no evidence that the court erred in so assessing Mr. Roberts's demeanor, and hence, the court did not abuse its discretion in allowing the additional examination. Also, the State elicited from Mr. Wightman similar testimony regarding the choking. Mr. Roberts's testimony on the same matter was cumulative, and hence, any error in the admission of the testimony is harmless.

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