

Circuit Court for Montgomery County
Case No. C-15-CR-24-000333

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1384

September Term, 2024

JAMES TRI THAI CAO

v.

STATE OF MARYLAND

Graeff,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 9, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

James Tri Thai Cao, appellant, was found guilty of stalking in the Circuit Court for Montgomery County based on a plea of not guilty pursuant to an agreed statement of facts. On appeal, he raises the following question for our review:

Was the evidence sufficient to convict appellant of stalking where he engaged in a hidden course of conduct that would only have caused serious emotional distress if it were discovered?

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

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, his then-fiancée, K., and the victim, T., were tenants who shared a house in Gaithersburg, Maryland.¹ On March 25, 2023, T. discovered that appellant was using his cell phone to record her while she was in the shower. T. and K. went to the police, who obtained a search warrant for appellant's cell phone, where they found numerous incriminating video recordings.

Appellant was charged by criminal information with twenty counts of visual surveillance and one count of stalking T. At the bench trial pursuant to an agreed statement of facts, the prosecutor proffered the following statement of facts:

Your Honor, had this proceeded to trial, the State would have shown that on March 25th, 2023, at [address redacted] in Montgomery County, Maryland, the victim in this matter, [T.], was in the shower when she observed that the door was slightly ajar. She went, got outside, got out of her shower, and closed the door, and proceeded to get back in the shower. However, she again noticed the door was opened, and this time, which -- with what appeared to be a phone come through the crack in the door.

At that time, the defendant -- the victim, [T.], yelled. This, in turn, woke up the -- another resident, [K.], in her bedroom, and she observed the

¹ For privacy purposes, we will refer to the victim and her roommate by their initials.

defendant come through the bedroom into her bedroom with a phone in hand and get into the bed.

[K.] was the [fiancée] of the defendant . . . James Cao. They then followed up Ms. -- both [K.] and [T.], the victim, both followed up with the defendant and asked what had happened. He had first indicated he had no idea what was happening. However, two days later, on March 27th, he indicated to them that he had intended on taking a video of the -- of his [fiancée], [K.] He showed the victim a video with that cut out right before it went into the shower. The victim, [T.], and [K.], then took -- he gave the phone to them to review this video.

They noticed there was no timestamp. They noticed that the victim was not in the video. They noticed that it was on an editing app. While they had his phone, they then proceeded to go scroll through his phone and noticed a file named taxes. When that file was opened, they viewed numerous videos of the victim and the -- of the victim, [T.], in the shower, in her own shower, naked with her breasts, buttocks, and vagina exposed. These were all captured on the phone of the defendant. The earliest of that video dating back all the way to January 4th of 2022.

The victim and the defendant's [fiancée] then confronted the defendant as to these videos. The defendant shut down and left the house, leaving the phone in their possession. Concerned for his mental well-being, they called his friend, Santiago Urbina (phonetic sp.), to ask him help locate him. They located him at a local grocery store nearby their house. Santiago then approached the defendant. They spoke, and he took him back. He took the defendant back to a mutual friend's house. At that time, the defendant then confessed to the -- to Santiago that he had, indeed, been filming [T.] numerous times in the past and that now his [fiancée], [K.], was aware of that.

He was eventually taken to a hospital. The [] victim, [T.], and [K.], went back to the house, gathered their belongings, and left the residency with the phone still in their -- defendant's phone still in their possession. The next day, March 28th, the victim called the police. They set up a time to meet. She came in with the phone and provided it to Ofc. Bauer (phonetic sp.). Ofc. Bauer then applied for a search warrant. It was granted, and he executed the search warrant, provided the phone to the Electronic Crimes Unit, placed it in the care of Jesse -- Det. Jesse Stryker, and then did a digital forensic download and confirmed that the videos were on the defendant's phone. The State would have shown that the videos that were on the phone there, the video from February 23rd, 2023, February 25th of 2023 --

* * *

So the [detective] did a digital download of the videos and confirmed that on February 23rd, 2023, surveillance of the victim in her bathroom was performed by the defendant capturing her breasts, buttocks, and vagina areas. And Your Honor, this is for all of them.

* * *

February 23rd, February 25th, March 7th, March 9th, two for March 12th, March 17th, March 19th, March 21st, March 24th, two from March 25th. And those were the videos that the detective would accurately place as the timestamps of those videos taken on those dates.

* * *

All showing the same depictions of the victim in her bathroom at [address redacted]. Additionally, after this incident, shortly after [K.], the then [fiancée] of the defendant received a letter from the defendant in which he expressed both remorse for his relationship with [K.] as well as apologizing for his actions towards the victim.

* * *

. . . [T]he victim in this case, [T.], would testify that the actions committed by the defendant, when discovered by the victim, caused serious emotional distress within [T.]

Additionally, Your Honor, in this matter, the defendant -- or the facts and circumstances that would be introduced of the videos, of what they captured, where they were captured, and the defendant's indication of the confession of filming the victim would show the prurient intent of the defendant.

Also, as already indicated, the defendant's phone, he conducted the visual surveillance of the victim's private areas, in this case, by use of his own camera, and the victim would indicate she did not consent to this. The victim would also indicate that she did not believe that her private areas were visible to the public at the time she was taking the shower.

The defense moved for judgment of acquittal on all counts. The court granted the motion on the 20 counts charging visual surveillance.² With respect to the charge of stalking, the court found appellant guilty, stating:

[Appellant] argues that, because he acted surreptitiously, there’s no evidence that he intended to harm the victim, and because his conduct went undetected, there’s no evidence that the victim would have suffered any harm.

Under criminal law, Article 3[-]802, a person may not engage in stalking. Stalking is defined as relevant here to mean a malicious course of conduct that includes approaching or pursuing another where . . . the person intends to cause, or knows, or reasonably should have known, that the conduct would cause serious emotional distress to another.

Here, the stipulated facts include numerous instances over several months of the defendant approaching the victim surreptitiously while she was in the shower and filming her without her consent. The stipulated facts also included that the victim would have testified that it caused her serious emotional distress, which under . . . the circumstances would have been understandable.

Given the many times that this conduct occurred, under the facts as presented, I have no difficulty in finding that the defendant reasonably should have known that his actions would have that effect if and when discovered. I see no requirement in the statute under the prong under which this falls that the victim must have been aware of the action at the time it was occurring.

Accordingly, I’m satisfied that the evidence shows beyond a reasonable doubt that defendant’s guilty of stalking, and I also find him guilty of that charge under Count XXI.

² The court stated that the statute under which appellant was charged, Md. Code Ann., Criminal Law (“CR”) § 3-902(c)(2) (2021 Repl. Vol.), does not apply to a private residence. We note that, effective October 1, 2025, the statute provides that a residence is a “private place” subject to CR § 3-902(c)(2)’s prohibitions on visual surveillance. CR § 3-902(a)(5)(i)(9) (2025 Supp.).

The court sentenced appellant to five years' incarceration, all but one year suspended, to be followed by five years of supervised probation. This timely appeal ensued.

DISCUSSION

Appellant contends that the evidence was insufficient to support his conviction of stalking. Specifically, he asserts that, although he engaged in a course of surreptitious videotaping of T., there was no evidence that he intended to cause serious emotional distress to T. or that he knew or reasonably should have known that his actions would do so because he did not intend that T. would discover his actions.

The State contends that the evidence was sufficient to support appellant's conviction for stalking. It asserts that appellant "reasonably should have known that his surveillance of the victim—by way of recording her with his cell phone, which was, at least at times, in her plain sight, would be discovered by the victim, thereby causing her serious emotional distress."

I.

Standard of Review

This Court has set forth the applicable standard of review in determining the sufficiency of the evidence, as follows:

The test of appellate review of evidentiary sufficiency is whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with

sufficient evidence—that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offense charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994). Further, “the finder of fact has the ‘ability to choose among differing inferences that might possibly be made from a factual situation’ That is the fact-finder’s role, not that of an appellate court.” *Smith v. State*, 415 Md. 174, 183 (2010) (quoting *State v. Smith*, 374 Md. 527, 534 (2003)). Moreover, when evaluating the judgment of the trial court in a non-jury trial, the judgment of the trial court will not be set aside unless clearly erroneous. *Khalifa v. State*, 382 Md. 400, 418 (2004).

Kamara v. State, 205 Md. App. 607, 632 (2012). *Accord Nguyen v. State*, 492 Md. 179, 197-98 (2025). As indicated, appellant’s convictions resulted from a plea of not guilty pursuant to an agreed statement of facts. The Supreme Court of Maryland has referred to this type of plea as a “hybrid plea,” in which the defendant pleads not guilty and foregoes trial, in exchange for the ability to argue legal issues on appeal. *Bishop v. State*, 417 Md. 1, 16 (2010). By pleading not guilty, appellant “in effect had a trial,” and he “retained his full appellate review.” *Bruno v. State*, 332 Md. 673, 691 (1993). As this Court has explained:

Under an agreed statement of facts, the State and the defense agree to the ultimate facts, and the court merely applies the law to the agreed upon facts. *Bishop*, 417 Md. at 21. *Accord State v. Thomas*, 464 Md. 133, 140 (2019). By entering [a not guilty plea], the accused retains the right to argue legal issues, including sufficiency of the evidence. *Bishop*, 417 Md. at 22. If the prosecutor fails to present evidence to support all elements of the crime, an acquittal will result. *Id.* at 23.

White v. State, 250 Md. App. 604, 648, *cert denied*, 475 Md. 717 (2021).

II.

Analysis

Appellant was found guilty of stalking, in violation of Md. Code Ann., Criminal Law (“CR”) § 3-802 (2025 Supp.). This statute provides, as relevant to this appeal, as follows:

(a) In this section:

(1) “stalking” means a malicious course of conduct that includes approaching or pursuing another^[3] where:

* * *

(ii) the person intends to cause or knows or reasonably should have known that the conduct would cause serious emotional distress to another; and

(2) “stalking” includes conduct described in item (1) of this subsection that occurs:

(i) in person;

(ii) by electronic communication, as defined in § 3-805 of this subtitle; or

(iii) through the use of a device that can pinpoint or track the location of another without the person’s knowledge or consent.

Appellant concedes that he engaged in a course of conduct that caused T. to suffer serious emotional distress. His sole contention relates to the requisite *mens rea*. In *Schiff v. State*, 254 Md. App. 509, 518-19 (2022), the defendant was convicted of stalking an

³ CR § 3-801 defines “course of conduct” as “a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose.”

Assistant State’s Attorney (“ASA”) based on sending repeated emails to her and a colleague. This Court rejected Schiff’s claim that the evidence was insufficient because he did not intent to cause the ASA emotional distress, noting that the inquiry under CR § 3-802(a)(2) did not end with Schiff’s subjective intentions, but also included actions that a reasonable person know would cause severe emotional distress. *Id.* at 532. We concluded that, based on the facts in that case, a reasonable person would have found Schiff’s communications alarming, and therefore, a rational factfinder could have found the objective intent standard satisfied, i.e., “that a reasonable person in Schiff’s position would have known his communications would cause [the ASA] serious emotional distress.” *Id.* at 533-34.

Here, we similarly conclude that a rationale factfinder could conclude that a reasonable person in appellant’s position would have known that his conduct in surreptitiously recording the victim while she was nude in the shower would cause T. serious emotional distress. Although appellant argues that he attempted to conceal his behavior from the victim, we agree with the State that he “reasonably should have known that his surveillance of the victim—by way of recording her with his cell phone, which was, at least at times, in her plain sight, would be discovered by the victim, thereby causing her serious emotional distress.” The evidence was sufficient to sustain appellant’s conviction.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS ASSESSED TO
APPELLANT.**