UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0749

September Term, 2015

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MICHELLE LYNN WILLIAMS

v.

STATE OF MARYLAND

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Kehoe,
Leahy,
Davis, Arrie W.
(Retired, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: July 11, 2016

Following a bench trial in the Circuit Court for Cecil County, Michelle Williams, appellant, was convicted of child abuse, rendering a child in need of assistance, and two counts each of second-degree assault and intercepting oral communications.[1] Appellant asks two questions on appeal:

> I. Did the trial court violate Md. Rule 4-246 and federal/state constitutional law when it accepted appellant's waiver colloquy regarding her right to a jury trial?
>
> II. Did the trial court err when it denied appellant's motion for judgment of acquittal on each of her convictions, except second-degree assault?

For the following reasons, we shall affirm the circuit court's judgments.

## FACTS

The State's theory of prosecution was that, on the late afternoon of August 3, 2014, appellant and two other women were involved in the assault of then eight-year-old C. W. Appellant is related to C. through marriage – she is C.'s great-aunt. The State introduced into evidence a video appellant took of the assault, as well as the testimony of C., and the investigating social worker and police officer. The theory of defense was lack of criminal agency and culpability. Appellant's husband testified for the defense. Viewing the evidence in the light most favorable to the State, the following was established.

[1] The court sentenced appellant to ten years of imprisonment, all but five years suspended, for child abuse; a consecutive five years, all but two years suspended, on one count of intercepting an oral communication; and a concurrent five years, all but two years suspended, on the other count of intercepting an oral communication. The court merged her remaining convictions.

On September 3, 2014, Ashley Farr, a child protective service assessor for the Cecil County Department of Social Services, received a referral for C. W. and spoke with her the next day in the home of her guardian, Debbie Dawkins. Apparently, C. had been living with Dawkins for close to a year because C.'s mother was unable to provide for her care. During their conversation, Dawkins gave Farr a 27-second video. The video shows C. screaming while being assaulted by three women who were later identified as appellant, Dawkins and Andrea Lloyd. Debbie Dawkins and appellant are sisters, and appellant is married to C.'s great-uncle, Arthur Williams. Appellant, Dawkins, and Lloyd are neighbors. Farr reviewed the video and gave it to Detective Lindsay Ziegenfuss of the Elkton Police Department.

On September 5, 2014, Detective Ziegenfuss removed C. from Dawkins's home. Later that day, the detective went to Dawkins's home to obtain clothing for C.. She asked Dawkins and appellant, who was also present, whether they would speak with her about C. and the video. They agreed. The detective audiotaped their conversation, which was played for the court.

During the conversation, appellant told the detective that, on August 3rd, Dawkins, her sister, had telephoned her and asked her to come over to her house because she was having trouble with C.. When she arrived, Dawkins and Andrea Lloyd were present. Appellant noticed that C. was hyperventilating, so she went into the bathroom to get a wet rag to wipe C.'s face. When she returned, Lloyd was "wrestling" with C.. She claimed that

two days after the incident she discovered the video on her phone, and it was only then that she realized that Lloyd was not wrestling with C. but choking her. Appellant denied being involved in the incident or video recording it on her phone, and suggested that C. had recorded the assault while she was being assaulted. Appellant eventually admitted to the detective that it was her voice in the video telling C. to show Uncle Art how upset she was.

The video was played for the trial court. Additionally, still images from the video were also admitted into evidence. Based on distinctive tattoos on the hands and arms of Lloyd and appellant, the detective described what was happening in the video and photographs. The images showed a crying and, at times, screaming, C.. Appellant's hand can be seen reaching forward at one point to grab C.'s upper left arm. The video shows Lloyd's hand around C.'s neck while she is being pushed onto the living room couch. Appellant is heard saying, "Show Uncle Art you are crying." Dawkins is heard saying, "Show Uncle Art your ugly face."

C. W. testified that she had lived with Dawkins, and that appellant had made the video. C. referred to appellant as "Aunt Michelle" and explained that she was her uncle's wife and Dawkins's sister. C. testified that, before the video was taken, she was crying because she missed her mother with whom she had had only limited phone contact while living with Dawkins. C. testified that, on the day of the videotaping, Dawkins had hurt her

by hitting her, appellant had hurt her by "twist[ing] her lip," and Lloyd had hurt her by choking her.

Matthews, Dawkins neighbor, testified that, sometime in August 2014, Dawkins had asked her to come over and help her calm down C.. When she got there, C. was "very worked up" – she was screaming and crying and trying to catch her breath. Matthews left shortly thereafter. A few days later, Dawkins asked Matthews to meet her and appellant, which she did. Appellant said she had a video on her cell phone that she wanted Dawkins to see. They asked Matthews if she could help them forward the video from appellant's phone to Dawkins phone, which she did.

Appellant's husband testified that he and appellant lived about five blocks from Dawkins, his wife's sister. He testified that, while C. lived at Dawkins's home, appellant visited Dawkins "a couple of times." He explained that C.'s mother is his sister's daughter, making C. his great-niece.

## DISCUSSION

### I.

Appellant argues on appeal that her convictions should be reversed because the trial court erred when it accepted her jury trial waiver without ensuring that she "knowingly" and "voluntarily" relinquished her right, under Md. Rule 4-246(b), the Sixth Amendment to the United States Constitution, and Articles 5, 23, and 24 of the Md. Declaration of Rights.

Appellant acknowledges that her counsel did not object to the allegedly "defective waiver colloquy," but nonetheless argues that a lack of an objection does not preclude appellate review. The State responds that, because there was no objection, appellant has waived both of her arguments. The State further argues that, even if her arguments are preserved, the examination of appellant was sufficient to ensure that her jury trial waiver was knowing and voluntary.

On the first day of trial, defense counsel informed the trial court that appellant was waiving her right to a jury trial. Defense counsel asked the court if he could question her about her election, and the following colloquy occurred:

> [DEFENSE COUNSEL]: Miss Williams, we met last Friday afternoon and discussed your two options for trial. Correct?
>
> THE DEFENDANT: Yes.
>
> [DEFENSE COUNSEL]: We met here in the library in the circuit court building?
>
> THE DEFENDANT: Yes.
>
> [DEFENSE COUNSEL]: And I explained to you that you could have a jury trial in which you and I would participate in the selection of 12 jurors to sit on your case or we could have the court try you. All jurors would have had to have reached a unanimous decision of guilt or innocence, but the burden of proof would be beyond a reasonable doubt and to a moral certainty. Also, the court who would hear your case would also have to abide by that standard of proof, finding you guilty beyond a reasonable doubt and to a moral certainty. Do you understand that?
>
> THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: You at that time told me you didn't want to make the decision right then, you wanted to talk to your family members, and you indicated you were going to call me Sunday afternoon to let me know what you wanted to do.

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: And you, in fact, did call me Sunday afternoon, we spoke about it briefly, and you indicated – and I recommended a court trial, but wanted the decision to be yours, and you indicated that you wanted a court trial? Is that right?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Do you have any questions about that?

THE DEFENDANT: No.

[DEFENSE COUNSEL]: Do you want to talk to me privately or ask the Court anything?

THE DEFENDANT: No.

[DEFENSE COUNSEL]: Okay. So you realize you have waived your right to a jury trial and [the Court] is going to hear your case?

THE DEFENDANT: Yes.

THE COURT: Miss Williams, you understand all that [Defense counsel] has explained to you with regard to your rights of having both trials?

THE DEFENDANT: Yes.

THE COURT: And you understand everything with regard to a jury trial and you understand all the things that [Defense counsel] could do in a jury trial or court trial?

THE DEFENDANT: Yes.

THE COURT: And you wish to waive your right to a jury trial and proceed by way of a court trial here today. Is that correct?

THE DEFENDANT: Yes.

THE COURT: Thank you.

**A. Preservation**

Appellant concedes, as she must, that she did not object at any time to her examination but argues that a contemporaneous objection is not required to preserve her argument that the colloquy was defective under both Md. Rule 4-246(b) and federal/state constitutional law.

An accused's right to a trial by jury is guaranteed by the Sixth Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). Similar protection is given criminal defendants in the Articles of the Maryland Declaration of Rights, specifically Articles 5, 21, and 24. *Boulden v. State*, 414 Md. 284, 293-94 (2010). A defendant has the corresponding right to waive the right to a jury trial and instead elect to be tried by the court. *Id*. at 294 (citations omitted).

Those constitutional rights are protected and amplified in Md. Rule 4-246, which governs the waiver of trial by jury in the circuit court. That Rule provides, in pertinent part:

> (b) **Procedure for acceptance of waiver.** A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.
>
> (c) **Withdrawal of a waiver.** After accepting a waiver of jury trial, the court may permit the defendant to withdraw the waiver only on motion made before trial and for good cause shown.

Given recent developments in the law, it is now clear that a contemporaneous objection to a "determine and announce" claim is required to preserve that allegation under Md. Rule 4-246(b). In *Nalls and Melvin v. State*, 437 Md. 674 (2014), a case concerning the "determine and announce" language in Md. Rule 4-246(b), a plurality of the Court pronounced that: "to the extent that *Valonis* [*v. State*, 431 Md. 551 (2013)] could be read to hold that a trial judge's alleged noncompliance with Rule 4-246(b) is reviewable by the appellate courts despite the failure to object at trial, that interpretation is disavowed." *Nalls*, 437 Md. at 693-94. What the Court of Appeals did not make clear, however, is whether a contemporaneous objection is required to preserve a faulty colloquy claim under Md. Rule 4-246(b).

In *Meredith v. State*, 217 Md. App. 669, 673-74, *cert. denied*, 440 Md. 226 (2014), we were persuaded that the *Nalls* Court holding was broad and that a contemporaneous objection is required to preserve any claim of non-compliance with Rule 4-246(b). *See*

*Nalls*, 437 Md. at 693 (opinion of Greene, J.) ("Going forward, however, the appellate courts will continue to review the issue of a trial judge's compliance with Rule 4-246(b) provided a contemporaneous objection is raised in the trial court to preserve the issue for appellate review."); *Id*. at 699 (McDonald, J., concurring and dissenting) ("I disagree with the plurality's application of Rule 4-246(b) in these cases, although I agree with its holding that the contemporaneous objection rule applies."); and *Id*. (Watts, J., concurring and dissenting) ("In a salutary development, with the instant opinion, the Court eliminates any doubt and conclusively determines that a contemporaneous objection is required to preserve for appellate review the waiver of the right to a jury trial pursuant to Rule 4-246(b)[.]"). We therefore held in *Meredith* that where appellant "made no objection below to the waiver procedure, to its content, or to the trial court's announcement as to the 'knowingly and intelligently' made waiver of his right to a jury trial[, h]is challenge to the effectiveness of his waiver is not preserved for our review and is not properly before this Court." *Meredith*, 217 Md. App. at 674-75. We additionally declined to "exercise our discretion under Rule 8-131 to consider the issue." *Id*. at 675.

As to whether a contemporaneous objection must be made to preserve one's constitutional jury trial rights, we look to the discussion in *Curtis v. State*, 284 Md. 132 (1978). In that case, the Court of Appeals interpreted the waiver provision of the Maryland Uniform Post Conviction Procedure Act, now codified at Md. Code Ann., Criminal

Procedure Article (Crim. Proc.) § 7-106(b). The Court of Appeals, in its discussion, expressly recognized the right to trial by jury as an example of a fundamental right that could not be waived by procedural default but only by the exercise of a free and intelligent choice. *Curtis*, 284 Md. at 143 (citing *Adams v. United States ex. rel. McCann*, 317 U.S. 269, 275 (1942) and *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

Based on the broad, unqualified language used in *Nalls*, and the discussion in *Curtis*, we conclude that, absent a contemporaneous objection, the only "right to trial" waiver that may be raised on appeal are those expressly alleging a violation of the constitutional right to a jury trial based on a defective colloquy. Because appellant made no objection below to the inquiry surrounding her waiver of her right to a jury trial, she has waived her Md. Rule 4-246(b) claim but not her constitutional claim.

To pass constitutional muster, the waiver of the right to a jury trial must be "knowledgeable and voluntary," that is, that there has been an intentional relinquishment or abandonment of a known right or privilege. *Johnson v. Zerbst*, 304 U.S. at 464. It is now long-established that a court need not advise the accused of the details of a jury trial or of the jury selection process, but it must "satisfy itself that the waiver is not a product of duress or coercion and further that the *defendant has some knowledge* of the jury trial right before being allowed to waive it." *State v. Bell*, 351 Md. 709, 725 (1998) (quotation marks and citations omitted) (emphasis in *Bell*). Thus, while courts need not engage in any "specific

litany," the record must show that the defendant has some information regarding the nature of a jury trial. *Abeokuto v. State*, 391 Md. 289, 320 (2006) (quotation marks and citation omitted). "Whether there is an intelligent, competent waiver must depend on the unique facts and circumstances of each case." *Valiton v. State*, 119 Md. App. 139, 148, *cert. denied*, 349 Md. 495 (1998) (quotation marks and citation omitted). "If the record in a given case does not disclose a knowledgeable and voluntary waiver of a jury trial, a new trial is required." *Smith v. State*, 375 Md. 365, 381 (2003) (citations omitted).

Appellant points to three alleged deficiencies during her colloquy that made her jury trial waiver insufficient. She argues that: 1) her counsel wrongly suggested to her that a jury would have to reach a "unanimous decision" as to her *innocence*, 2) she was not told that jurors would be picked from a list that includes registered voters and licensed drivers, and 3) she was not told that, once she waived her right to a jury trial, she could not change her election, absent good cause.

We are persuaded that she had some knowledge of her jury trial right and that the alleged deficiencies do not require reversal. Appellant confirmed during her waiver colloquy that she and her attorney had met a few days earlier, and he had explained (and she understood) her two options for trial. She additionally confirmed that she was told that, if she elected a jury trial, she and her attorney would select 12 jurors to sit on her case, that all the jurors would have to reach a unanimous decision of guilt, that the burden of proof was

beyond a reasonable doubt and to a moral certainty, and that the same standard of proof would apply in a court trial. She also confirmed that she discussed the matter with family members, and talked to her attorney a second time over the weekend. She stated that she had no questions about her decision and had understood everything her attorney had explained to her.

Clearly, defense counsel's statement to appellant that the jurors "would have had to have reached a unanimous decision of guilt or innocence" was an unintentional misstatement of the law, but we are persuaded that it does not merit reversal of her convictions. We note that defense counsel followed that statement with correct information that the standard of proving her *guilt* was beyond a reasonable doubt. Her complaint that she was not told the makeup of the juror list or that, once she waived her right to a jury trial, she could not change her election absent good cause, also does not invalidate her waiver. As stated above, the right does not require "full knowledge," only some knowledge, of which she was advised on the record.

Appellant also argues that her waiver failed to establish that it was voluntarily made because it failed to show that: 1) she was free from the influence of any drugs or medication, 2) no one had threatened or coerced her into making her decision, and 3) no one had offered her anything in exchange for giving up her right to a jury trial. She directs us to information elicited during her suppression hearing that she had only a ninth grade education, had

difficulty reading and writing, suffered from anxiety for which she took medication, and that she had been under the care of a psychiatrist for many years. Her argument that her jury trial waiver was not voluntary is similarly without merit.

A court is permitted to accept a jury trial waiver as voluntary "without asking any specific questions about voluntariness[,]" unless there was a factual trigger. *Aguilera v. State*, 193 Md. App. 426, 442 (2010). *See also Abeokuto*, 391 Md. at 321. There is no suggestion that the trial court did not have ample opportunity to observe appellant's demeanor. Our review of the jury trial waiver colloquy and the court's and parties' interaction with appellant suggest in no way that such a voluntariness inquiry was necessary. *Cf. State v. Hall*, 321 Md. 178, 183 (1990) (holding that trial court could be satisfied that the defendant's jury trial waiver was voluntary where the trial court did not inquire into whether the defendant's jury trial waiver "was the result of any physical or mental duress or coercion"). Information elicited before a different judge at the suppression hearing that she was on anxiety medication and seeing a psychiatrist does not make her waiver involuntary. We also note that appellant testified at the suppression hearing that her medication and psychiatric treatment had no effect on her understanding of the proceedings.

In sum, under the totality of the circumstances, we are persuaded that the trial court did not err in accepting appellant's jury trial waiver as both knowing and voluntary under federal and state constitutional law.

## II.

Appellant argues that the trial court erred in denying her motion for judgment of acquittal as to all of her convictions, except second-degree assault. The State disagrees, as do we. We shall address each argument in turn.

When reviewing the sufficiency of the evidence, our task is to determine "'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.'" *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)(emphasis in original). "That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citation omitted). "[W]hen evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial court will not be set aside on the evidence unless clearly erroneous[.]" *State v. Raines*, 326 Md. 582, 589, *cert. denied*, 506 U.S. 945 (1992). This is because we give "due regard to the opportunity of the trial judge to observe the demeanor of the witnesses and to assess their credibility." *Wiggins v. State*, 324 Md. 551, 567 (1991), *cert. denied*, 503 U.S. 1007 (1992). *See also Bryant v. State*, 142 Md. App. 604, 622, *cert. denied*, 369 Md. 179 (2002).

### A. Child abuse

Appellant argues that the evidence was insufficient to sustain her conviction for child abuse because the State failed to prove that she was a "family member" within the meaning of the statute. Additionally, she argues that the statute defining "family member" is unconstitutionally vague. The State responds that appellant clearly falls within the term family member as defined by the statute, and her constitutional challenge is not preserved for our review because she did not raise it below.

#### 1. Is a great-uncle a "family member?"

Child abuse in the second-degree is codified at Md. Code Ann., Criminal Law Article (Crim. Law) §3-601(d), which provides that "[a] household member or family member may not cause abuse to a minor." CL §3-601(d)(1)(ii). "Family member" is defined as "a relative of a minor by blood, adoption, or marriage." CL § 3-601(a)(3).

In determining the interpretation to be given a statute, the Court of Appeals has said:

> The chief goal of statutory interpretation is to discover the actual intent of the legislature in enacting the statute, and the legion of cases that support this proposition need not be repeated here. In fact, all statutory interpretation begins, and usually ends, with the statutory text itself, . . . for the legislative intent of a statute primarily reveals itself through the statute's very words . . . . A court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application. *County Council v. Dutcher*, 365 Md. 399, 416-417A.2d 1137, 1147 (2001). In short, if the words of a statute clearly and unambiguously delineate the legislative intent, ours is an ephemeral enterprise. We need investigate no further but simply apply the statute as it reads. *Derry*, 358 Md.

> at 335, 748 A.2d at 483; *Kaczorowski v. City of Baltimore*, 309 Md. 505, 515, 525 A.2d 628, 633 (1987).
>
> In some cases, the statutory text reveals ambiguity, and then the job of this Court is to resolve that ambiguity in light of the legislative intent, using all the resources and tools of statutory construction at our disposal. . . . However, before judges may look to other sources for interpretation, first there must exist an ambiguity within the statute, *i.e.*, two or more reasonable alternative interpretations of the statute. *See Greco v. State*, 347 Md. 423, 429, 701 A.2d 419, 421 (1997). Where the statutory language is free from such ambiguity, courts will neither look beyond the words of the statute itself to determine legislative intent nor add to or delete words from the statute, *see Gillespie v. State*, 370 Md. 219, 222, 804 A.2d 426, 427 (2002). Only when faced with ambiguity will courts consider both the literal or usual meaning of the words as well as their meaning in light of the objectives and purposes of the enactment. As our predecessors noted, "We cannot assume authority to read into the Act what the Legislature apparently deliberately left out. Judicial construction should only be resorted to when an ambiguity exists." *Howard Contr. Co. v. Yeager*, 184 Md. 503, 511, 41 A.2d 494, 498 (1945). Therefore, the strongly preferred norm of statutory interpretation is to effectuate the plain language of the statutory text.

*Price v. State*, 378 Md. 378, 387-88 (2003).

The language of § 3-601(a)(3) defining family member as "a relative of a minor by blood, adoption, or marriage" is clear and unambiguous. The statute plainly and obviously includes appellant as she is a person related to the victim through marriage – she is married to the victim's great-uncle. Appellant tries to narrow the definition of family member by adding the requirement that a family member includes only those relatives who spend a significant amount of time with the child. We decline to "construe the statute with forced or subtle interpretations that limit or extend its application[.]" *Price*, 378 Md. at 387.

**2. Is the definition of "family member" constitutionally void for vagueness?**

Appellant alternatively argues that the statutory definition of family member is so broad as to render the child abuse statute void for vagueness. Appellant admits that she did not raise this claim below, but she argues that this failure does not preclude our review because she elected a bench trial, which means she was not required to raise sufficiency of the evidence arguments.

Appellant confuses the purpose of Md. Rule 4-324(a), which governs the preservation of motions for judgment of acquittal, and Md. Rule 8-131(a), which governs preservation generally. Md. Rule 4-324(a) provides that "a defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence." Therefore, in a court-tried case, the defendant is excused from arguing sufficiency of the evidence. Md. Rule 8-131(a) provides, in pertinent part: "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"

Appellant's argument is not a sufficiency of the evidence argument but a constitutional argument. Therefore, we look to Md. Rule 8-131(a) to determine if the argument is preserved for appellate review. We have said:

> The purpose of Maryland Rule 8-131 is to allow the court to correct trial errors, obviating the necessity to retry cases had a potential error been brought to the attention of the trial judge. The Rule is also designed to prevent

> lawyers from "sandbagging" the judge and, in essence, obtaining a second "bite of the apple" after appellate review.

*Sydnor v. State*, 133 Md. App. 173, 183 (2000), *aff'd*, 365 Md. 205 (2001), *cert. denied*, 534 U.S. 1090 (2002). We note that appellate courts need not address a constitutional issue not raised in the trial court, in light of the principle that an appellate court will not unnecessarily decide a constitutional question. *Winder v. State*, 362 Md. 275, 306-07 n.18 (2001) (citations omitted).

Here, appellant did not raise her constitutional argument before the trial court, and therefore, she has failed to preserve it for our review. *Cf. Robinson v. State*, 404 Md. 208, 211 (2008)(where Court of Appeals declined to address a claim that the definition of "family member" in the child abuse statute was constitutionally vague because it was not raised below.). Even if she had, however, we would not reverse.

When determining whether a statute is constitutional, the "basic rule is that there is a presumption" of validity and "[t]he party attacking the statute has the burden of establishing its unconstitutionality." *Galloway v. State*, 365 Md. 599, 610-11 (2001) (quotation marks, citations, and footnote omitted), *cert. denied*, 535 U.S. 990 (2002). A statute may be facially overbroad, encroaching on fundamental constitutional rights, like the free speech guarantees in the First Amendment, or overly broad as applied to the defendant's actions. *McCree v. State*, 441 Md. 4, 10 (2014). Here, appellant only argues that the statute is unconstitutional as applied to her.

When we consider void-for-vagueness arguments, we consider two rationales. "The first rationale is the fair notice principle that persons of ordinary intelligence and experience be afforded a reasonable opportunity to know what is prohibited, so that they may govern their behavior accordingly." *Galloway*, 365 Md. at 615 (quotation marks and citation omitted). "The standard for determining whether a statute provides fair notice is whether persons of common intelligence must necessarily guess at the statute's meaning." *Id*. (quotation marks, citation, and brackets omitted). "A statute is not vague under the fair notice principle if the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning." *Id*. (quotation marks, citations, and emphasis omitted). The second rationale is the enforcement of the statute. "This rationale exists to ensure that criminal statutes provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws." *Id*. at 615-16 (quotation marks and citations omitted). To survive analysis under this rational, "a statute must eschew arbitrary enforcement in addition to being intelligible to the reasonable person." *Id*. (quotation marks and citation omitted).

We can quickly dispose of appellant's constitutional void-for-vagueness argument. We are persuaded that a person of "common intelligence" in appellant's position would

understand that she fits within the term family member as defined by the statute. We find nothing remotely vague in the definition as that term is applied to appellant. Accordingly, even if she had preserved her constitutional void-for-vagueness argument for our review, we would have found it without merit.

**B. Intercept and disclose an oral communication**

Appellant was convicted of two counts of intercepting and disclosing private conversations in violation of the Maryland Wiretapping and Electronic Surveillance Act. *See* Md. Code Ann., Court and Judicial Proceedings Article (Cts. & Jud. Proc.) § 10-401 *et. seq*. She argues that we must reverse her convictions because the State presented no evidence that she recorded a "private conversation" as required under the statute. The State disagrees, as do we.

> § 10-402(a) makes it unlawful for a person to, among other things:
>
> (1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
>
> (2) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle[.]

"Intercept" means the "aural or other acquisition of the contents of any . . . oral communication through the use of any electronic, mechanical, or other device." § 10-

401(10). "Oral communication" is defined as "any conversation or words spoken to or by any person in private conversation." § 10-401(13)(i)(emphasis added).

The trial court convicted appellant of two counts of violating the wiretap statute based on her conduct in capturing, on video, the words spoken during the assault, subsection (a)(1), and then her sending the video to Dawkins cell phone, subsection (a)(2). Appellant argues on appeal that, at most, the State showed she did not record a "private conversation" but instead "intentionally" and "openly" used her cell phone to record the scene that unfolded in Dawkins's living room. She argues that her actions did not fall within the statute because she did not "eavesdrop" or "record an exchange between two or more people in another room, unaware of her presence."

We reject appellant's argument and are persuaded that the trial court's finding that appellant recorded a private conversation was not a clearly erroneous finding. That four people were involved in the incident does not negate the finding of privacy. We are persuaded that a fact-finder could believe that the actions seen on the video – the choking of an eight-year-old girl while she is verbally taunted, and obviously terrified and in distress – are actions that one would want to keep private and were in fact private as they took place in the intimacy of Dawkins's home. Morever, we are persuaded that a fact-finder could believe that C., who was crying and screaming in the video, would not want the activity on the video to be shared with others for their enjoyment as occurred here.

### C. Rendering a child in need of assistance

Appellant argues that the State failed to present evidence that she rendered C. in need of assistance in violation of Md. Code Ann., Cts. & Jud. Proc. § 3-828(a). Appellant first urges a narrow interpretation of that statute, arguing that the statute only applies to "adults who have custodial or supervisory rights over a child" and, therefore, her convictions must be reversed because she did not stand in that position as to C.. Appellant then argues that, even if the statute is read more broadly, there is no evidence that her "conduct made [C.'s] legal custodian unable or unwilling to care for [C.]."

Cts. & Jud. Proc. § 3-828(a) provides that "[a]n adult may not willfully contribute to, encourage, cause or tend to cause any act, omission, or condition that renders a child in need of assistance." A "child in need of assistance" is defined as "a child who requires court intervention because: (1) [t]he child has been abused, [or] has been neglected . . . and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Cts. & Jud. Proc. § 3-801(f).

Appellant reads the word "adult" narrowly so as to apply to only those adults with custodial or supervisory rights. Nowhere is that term defined as narrowly as appellant suggests, and appellant's narrow definition does not comport with the clear and unambiguous language of the statute. Additionally, we do not find clearly erroneous the trial court's conclusion that appellant's actions prevented Dawkins, C.'s guardian, from

providing C. with proper care and attention. The trial court found that appellant, as depicted on the video, grabbed C.'s arm and assisted in holding C. in place while she was choked, verbally abused, and pushed into the couch in the presence of and, with the approval of Dawkins, C.'s guardian. Under the circumstances, we do not find the trial court's findings clearly erroneous. There is another basis for our holding.

A trial court "is not required to explain its reasoning in arriving at the verdict. The verdict is permitted to speak for itself. *Chisum v. State*, 227 Md. App. 118, 139 (2015). The parameters of an appellate's court review for sufficiency of evidence where a claim of error is based upon a trial court's factual findings were explained by the *Chisum* court as follows:

> The issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not of execution.

*Id.* at 129-30 (emphasis added)

Because our review for sufficiency of evidence does not concern the trial court's factual findings, we will focus our analysis on the sufficiency of the evidence itself. We have no doubt that a fact-finder could reasonably conclude that appellant encouraged Dawkins in her course of action that placed C. in need of assistance. *See* Cts. & Jud. Proc. § 3-828(a)

("An adult may not willfully contribute to, encourage, cause or tend to cause any act, omission, or condition that renders a child in need of assistance.").

**THE JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY ARE AFFIRMED.**

**COSTS TO BE PAID BY APPELLANT.**