Circuit Court for Anne Arundel County
Case No. C-02-CR-16-000274

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1190

September Term, 2016

ZOEY RAINES

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah, S., J.

Filed: October 4, 2017

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

After a jury trial in the Circuit Court for Anne Arundel County, Zoey Raines, the appellant, was found guilty of indecent exposure. He was sentenced to three years in prison, with all but 420 days suspended, to be followed by three years of supervised probation. This timely appeal followed.

Raines's sole issue for review is whether the jury instructions violated his constitutional right to a fair trial. For the reasons set forth below, we shall affirm the judgment.

FACTS AND PROCEEDINGS

On March 3, 2015, Jody Sullivan was at work at Maryland Primary Care Physicians on Quarterfield Road. In the late afternoon, she carried some boxes outside to a dumpster. While outside, she noticed a man, later identified as Raines, walking "up and down the sidewalk" and in between cars in the employee parking lot and looking into car windows. Sullivan got into her car, which was in the employee parking lot, turned it on, and made a telephone call to a friend. She asked her friend to stay on the phone with her because she did not know what was going on with Raines, who she thought "looked suspicious." At one point, Sullivan looked to her right and saw Raines through the passenger side window of her car. He was leaning against another vehicle and facing Sullivan. His pants were down to his thighs and he was masturbating. After viewing Raines for "a couple seconds," Sullivan put her car in reverse, drove to the front of her office building, and called 911.

Sullivan walked back to her office building. As she entered the building, she saw Raines "on the corner," "looking down," with his pants pulled up. She went to an area in the building that had glass windows and doors. From there, she looked out and saw Raines

standing in the doorway. When Sullivan saw an employee leave the building, she went into an exam room, opened the window blinds, and watched the employee walk to her car. At that point, Sullivan saw Raines leaning against a nearby fence. His pants were down and he was masturbating again. Sullivan watched Raines for "a good minute" and saw his hand moving up and down his penis. When the police arrived, Raines pulled up his pants and walked into a nearby flower shop.

Anne Arundel County Police Corporal Christopher Apuzzio arrested Raines. Corporal Apuzzio was on vacation at the time of trial, so he did not testify, but the parties stipulated that if he had been called as a witness "he would have testified that a strong odor of an alcoholic beverage came from Raines's breath and person, and he appeared to be intoxicated."

Anne Arundel County Sheriff's Deputy Jason Wenger assisted Corporal Apuzzio. Deputy Wenger transported Raines to the Eastern District police station. While being transported, Raines stated, "Man, I was just trying to take a leak." After Raines had been taken to the police station, Deputy Wenger conducted a standard check of his vehicle. He found a "small mini bottle of vodka" where Raines had been sitting.

Raines's girlfriend, Fawn Parker, testified on his behalf. According to Parker, on the morning of the incident, the two stopped at a liquor store to purchase wine, beer, and two miniature bottles of liquor. They then went to the home of a friend, where they ate some food and drank wine. Raines drank two beers and the liquor from the miniature bottles. Parker described Raines as being drunk. While at their friend's house, Raines

went out on a balcony to smoke a cigarette and "kept coming in and out, going to the bathroom." Later, Raines left the apartment and Parker did not see him again.

DISCUSSION

Raines challenges the trial court's instructions to the jury on indecent exposure and voluntary intoxication. He argues that the trial court "erroneously instructed the jury that the State was not required to prove that [he] intended to expose himself in a public place," "implied" that his defense was "not legally viable," and "directed the jury to disregard relevant evidence that was critical to his actual theory of defense." He maintains that, as a result, he was denied his constitutional right to a fair trial. We disagree and explain.

Rule 4-325 governs instructions to the jury in criminal cases. It provides, in part:

> (c) **How given.** The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

We review a trial court's decision to give or refuse to give a particular jury instruction for abuse of discretion. *Hall v. State*, 437 Md. 534, 539 (2014); *Derr v. State*, 434 Md. 88, 133 (2013). A trial court abuses its discretion when "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Nash v. State*, 439 Md. 53, 67 (2014). "[I]f, taken as a whole, [the instructions] correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate." *Fleming v. State*, 373 Md. 426, 433 (2003).

Raines was charged with the common law crime of indecent exposure.[1] To establish that crime, the State was required to prove "a public exposure, made willfully and intentionally, as opposed to an inadvertent or accidental one; which was observed, or was likely to have been observed, by one or more persons, as opposed to performed in secret, or hidden from the view of others." *Wisneski v. State*, 398 Md. 578, 593 (2007). In the instant case, the trial judge modified a non-pattern jury instruction on indecent exposure that the parties had submitted by adding the sentence, "The purpose for which the exposure of the private part of the body was made is not an element of the offense of indecent exposure." The indecent exposure instruction given to the jury provided, in full:

> Indecent exposure is a public exposure, of a private part of one's body, such as a man's penis, made willfully and intentionally, as opposed to an inadvertent or accidental one; which was observed, or was likely to be observed, by one or more persons, as opposed to performed in secret, or hidden from the views of others.
>
> The element of general intent can either be express, or inferred from the circumstances and environment of the exposure. When a defendant exposes himself at such a time and place that a reasonable person knows, or should know, that his act may be observed by others, his acts are not accidental and his intent may be inferred.
>
> The purpose for which the exposure of the private part of the body was made is not an element of the offense of indecent exposure.

[1] Section 11-107 of the Criminal Law Article provides that "[a] person convicted of indecent exposure is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a find not exceeding $1,000 or both." Md. Code (2012 Repl. Vol.), § 11-107 of the Criminal Law Article ("CL").

The judge also gave a modified version of the Maryland Criminal Pattern Jury Instruction on voluntary intoxication, which neither party had requested.[2] Defense counsel objected to the inclusion of the voluntary intoxication instruction generally as well as to the modifications made by the judge. The voluntary intoxication instruction given to the jury provided:

> You have heard evidence that the defendant acted while intoxicated by alcohol. Generally, voluntary intoxication is not a defense and does not excuse or justify criminal conduct. However, when charged with an offense requiring a specific intent, the defendant cannot be guilty if he was so intoxicated, at the time of the act, that he was unable to form the necessary intent.
>
> In this case, the defendant is charged with the offense of indecent exposure, which does not require the State to prove that the defendant acted

[2] Maryland Criminal Pattern Jury Instruction 5:08 (2d ed., 2016 Supp.), which addresses voluntary intoxication, provides:

> You have heard evidence that the defendant acted while intoxicated by [drugs] [alcohol]. Generally, voluntary intoxication is not a defense and does not excuse or justify criminal conduct. However, when charged with an offense requiring a specific intent, the defendant cannot be guilty if [he] [she] was so intoxicated, at the time of the act, that [he] [she] was unable to form the necessary intent.
>
> A specific intent is a state of mind in which the defendant intends that [his] [her] act will cause a specific result. In this case, the defendant is charged with the offense of (offense requiring a specific intent), which requires the State to prove that the defendant acted with the specific intent to (specific intent). [Voluntary intoxication is not a defense to (offense not requiring specific intent), (offense not requiring specific intent), and (offense not requiring a specific intent).]
>
> In order to convict the defendant, the State must prove, beyond a reasonable doubt, that the degree of the intoxication did not prevent the defendant from acting with that specific intent. A person can be [drinking] [taking drugs] and can even be intoxicated, but still have the necessary mental faculties to act with a specific intent.

> with the specific intent to expose himself in a public place where it could be seen by other persons. The offense of indecent exposure only requires general intent, as I have already instructed you in my explanation of that charge. Voluntary intoxication is not a defense to the crime of indecent exposure.

A. Indecent Exposure

Raines's defense was that he did not "willfully and intentionally expose himself." Rather, he had been drinking alcohol and needed to relieve himself; he attempted to do so hidden from the view of others; but he was "accidentally" seen, and did not engage in any action that was "obscene." Defense counsel objected to the inclusion in the indecent exposure instruction of the sentence, "[t]he purpose for which the exposure of the private part of the body was made is not an element of the offense of indecent exposure[,]" on the ground that it "added an element of the crime which is not in either the statute or the common law," constituted argument by the court, and erroneously advised the jurors that the purpose for which Raines exposed himself did not matter. Raines maintained that the purpose for the exposure mattered because the State bore the burden of proving that the exposure was "willful and deliberate and not accidental." The court rejected those arguments, ruling that it was necessary to clarify for the jury that "the ultimate purpose of the exposure is in fact not an element" of the crime, that "it's really beyond the ken of the jury's determination . . . as to whether the purpose was for urination or masturbation[,]" and that because the issue had been generated, it was "incumbent upon the Court to properly instruct [the jury] as to what are and are not elements of the crime."

We find no abuse of discretion on the part of the trial judge in giving the modified non-pattern instruction on indecent exposure. As the Court of Appeals has noted, the

elements of the crime of indecent exposure are "inextricably entwined." *Wisneski*, 398 Md. at 593. With regard to the element of intent, the Court has explained:

> The element of intent can be express, or inferred from the circumstances and the environment of the exposure. When the defendant exposes himself at such a time and place that a reasonable person knows or should know that his or her act will be observed by others, his acts are not accidental and his intent may be inferred. *Messina* [*v. State*, 212 Md. 602, 606 (1957)]. The intent element itself is infused with a "public" element in the distinction between accidental and wilfulness, as was explored in *Van Houten v. State*, 46 N.J.L. 16 (1884), a case in which the Supreme Court of New Jersey interpreted English common law, when faced with the situation in which the defendant had urinated outside in a place visible to the residents of several homes. The defendant challenged the following charge to the jury regarding the intent element, which the court determined to be the correct statement of the law:
>
> > [T]he testimony must show that the exposure was not merely accidental, and in order to convict the defendant you ought to be satisfied, from the testimony, that the exposure was intentional, at such time and place, and such manner as to offend against public decency; but intent may be inferred from recklessness. It is not necessary that some witness should testify that the defendant had said that he intended to commit the act; you can infer what he intended to do from what he actually did do.
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> *Id.* at 18–19. Thus, reckless exposure, determined by time, place and manner, can inform intent.

Id. at 593–94.

It is well established that indecent exposure is a general intent crime. *See Ricketts v. State*, 291 Md. 701, 713 (1981) ("Indecent exposure is a general intent crime that includes within its scope an innumerable variety of offenses, including acts that are reckless or negligent."); *Messina v. State*, 212 Md. 602, 606 (1957) ("Indecent exposure, to amount to a crime, must have been done intentionally. . . .The essential intent is a general and not

a specific intent."). As the Court of Appeals recognized in *Ricketts*, the intent required for the crime of indecent exposure "does not require the accused to have performed a flagrant act damnable as an affront to decency and social norms but encompasses acts committed where the accused was unaware that his or her lack of apparel would be noticed." *Ricketts*, 291 Md. at 710–11. Thus, even public urination can constitute indecent exposure. That conclusion finds support in *Wisneski*, where the Court of Appeals referenced, as an example of indecent exposure, a New Jersey case, *Van Houten v. State*, 46 N.J.L. 16 (1884), which involved a defendant who had urinated in the yard of a home he shared with other people and only a few feet from the windows of two other houses. *Wisneski*, 398 Md. at 593–94.

Raines argues that the trial court improperly instructed the jury that the State was not required to prove that he acted with a specific intent to expose himself in a public place where the exposure could be seen by others because he attempted to conceal himself between the cars in the parking lot and never saw Sullivan or anyone else in that location. In short, he acknowledges that he intended to expose his penis, but argues that he did not intend for the exposure to be public and, as a result, his conduct could not, as a matter of law, fit within the elements of the crime of indecent exposure.

For several reasons, Raines is mistaken. First, his argument ignores Sullivan's testimony that she saw him masturbating on two occasions, once when he was between parked cars and later when he was near a fence. In any event, it was of no consequence whether Raines pulled his penis out of his pants for the purpose of urinating or masturbating. What mattered was whether he intended to expose himself. The "essential

intent is a general and not a specific intent." *Messina*, 212 Md. at 606. The State was not required to prove that Raines had a particular purpose in exposing himself, only that he had the general intent to expose himself at a time and in a place where he knew, or should have known, that his act might be observed by others. *Wisneski*, 398 Md. at 593; *Ricketts*, 291 Md. at 709–10.

In light of the required elements of the crime of indecent exposure, the evidence presented, and the arguments made concerning Raines's need to urinate at the time of the incident, the trial court did not abuse its discretion in adding language to the parties' proposed jury instruction in order to clarify the State's burden of proof, specifically that "[t]he purpose for which the exposure of the private part of the body was made is not an element of the offense of indecent exposure." That language was a correct statement of the law, was applicable under the facts and circumstances of the case, and was not fairly covered in the other instructions. Md. Rule 4-325(c); *Stevenson v. State*, 163 Md. App. 691, 694 (2005) (citing cases).

B. Voluntary Intoxication

With respect to the modified voluntary intoxication instruction, Raines challenges the court's statement that voluntary intoxication is not a defense to the crime of indecent exposure. He contends that that instruction, combined with the instruction that the State was not required "to prove that the defendant acted with the specific intent to expose himself in a public place where it could be seen by others[,]" "falsely suggested that [he] had assumed theories of defense which were not legally viable, and directed the jury to disregard relevant evidence that was critical to [his] actual, viable theory of defense."

According to Raines, by giving the modified instruction on voluntary intoxication, the court improperly relieved the State of its burden of proof and invaded the province of the jury.

We find no abuse of discretion with regard to the modified instruction on voluntary intoxication. It is well established that the defense of voluntary intoxication applies only to specific intent crimes. *Harris v. State*, 353 Md. 596, 603 (1999) ("It has long been the law in Maryland that while voluntary intoxication is a defense to a specific intent crime, it is not a defense to a general intent crime." (citing *Shell v. State*, 307 Md. 46, 58 (1986)). As we already have noted, indecent exposure is a general intent crime; for that reason, Raines did not (and could not) argue that he was too intoxicated to form a specific intent. Nevertheless, he repeatedly offered his intoxication and subsequent need to urinate as the reason for his conduct, even though his intoxication, like his intent to find a place to urinate, was not a viable defense to the crime of indecent exposure. In that circumstance, the trial court acted well within its discretion by making it clear to the jury that voluntary intoxication was not a defense to the crime charged. As Raines points out, there are occasions in which overinclusion with respect to a jury instruction can lead to reversible error. *See e.g.*, *Brogden v.* State, 384 Md. 631, 644 n.6 (2005) (jury instruction improperly imposed on defendant the burden to prove a defense he never raised). That is not the case here, however. Moreover, even if the trial court had abused its discretion in giving the modified voluntary intoxication instruction, any such error was superfluous, in no way influenced the verdict, and was harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976).

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.