

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2025 Term

No. 23-160

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

NATHAN DOLEN,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Cabell County
The Honorable Gregory L. Howard, Jr., Judge
Criminal Action No. 21-F-209

AFFIRMED

Submitted: October 7, 2025

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JUSTICE BUNN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. “The traditional appellate standard for determining prejudice for discovery violations under Rule 16 of the West Virginia Rules of Criminal Procedure involves a two-pronged analysis: (1) did the non-disclosure surprise the defendant on a material fact, and (2) did it hamper the preparation and presentation of the defendant’s case.” Syllabus Point 2, *State ex rel. Rusen v. Hill*, 193 W. Va. 133, 454 S.E.2d 427 (1994).

2. “The Sixth Amendment to the United States Constitution guarantees an accused the right to confront the witnesses against him. The Sixth Amendment right of confrontation includes the right of cross-examination.” Syllabus Point 1, *State v. Mullens*, 179 W. Va. 567, 371 S.E.2d 64 (1988).

3. “Pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), the Confrontation Clause contained within the Sixth Amendment to the *United States Constitution* and Section 14 of Article III of the *West Virginia Constitution* bars the admission of a testimonial statement by a witness who does not appear at trial, unless the witness is unavailable to testify and the accused had a prior opportunity to cross-examine the witness.” Syllabus Point 6, *State v. Mechling*, 219 W. Va.

366, 633 S.E.2d 311 (2006), *holding modified on other grounds by State v. Jako*, 245 W. Va. 625, 862 S.E.2d 474 (2021).

4. “A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.” Syllabus Point 3, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

5. “““To preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a circuit court to the nature of the claimed defect.” Syllabus point 2, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996).’ Syllabus point 10, *State v. Shrewsbury*, 213 W. Va. 327, 582 S.E.2d 774 (2003).” Syllabus Point 1, *State v. Sites*, 241 W. Va. 430, 825 S.E.2d 758 (2019).

BUNN, Justice:

After a violent robbery at the home of Ronald and Orlinda Adkins, a jury convicted Petitioner Nathan Dolen of entry of a building other than a dwelling, grand larceny, burglary, two counts of first-degree robbery, attempted first-degree murder, malicious assault of Mr. Adkins, two counts of kidnapping, use or presentment of a firearm during the commission of a felony, grand larceny, and third-degree arson. He was later sentenced, and on appeal, Mr. Dolen asserts four assignments of error, two involving cell site data that was introduced at trial and two relating to his kidnapping convictions. Regarding the errors concerning cell site data, he claims that (1) the circuit court erred by admitting a PowerPoint presentation containing mapped cell sites, which Mr. Dolen claims was not provided by the State in discovery, and (2) his constitutional right to confrontation was violated because the court allowed an expert to testify about the PowerPoint, when the expert did not create the presentation. Mr. Dolen also argues that the circuit court erred by finding that sufficient evidence supported his kidnapping convictions. Finally, he raises an error for the first time on appeal, asserting that his kidnapping convictions were incidental to the robbery and should be vacated. We find no error, and affirm Mr. Dolen's convictions and sentence.

I.

FACTUAL AND PROCEDURAL HISTORY

On the morning of November 22, 2020, Mr. Dolen went to the home of Ronald and Orlinda Adkins in Huntington, Cabell County, West Virginia, attacked and robbed the couple, then handcuffed them together. He threatened to return and shoot Mrs. Adkins if she called for help. The evidence at trial revealed Mr. Dolen stole guns and other items from the Adkinses' home, including a truck, which he later burned before being arrested that afternoon.

A grand jury returned an indictment charging Mr. Dolen with thirteen felonies:¹ entry of a building other than a dwelling,² grand larceny,³ burglary,⁴ two counts of first-degree robbery,⁵ attempted first-degree murder,⁶ two counts of malicious assault,⁷

¹ The fifteen-count indictment included two counts charging another individual with accessory after the fact.

² W. Va. Code § 61-3-12.

³ W. Va. Code § 61-3-13(a).

⁴ W. Va. Code § 61-3-11(a).

⁵ W. Va. Code § 61-2-12(a).

⁶ W. Va. Code § 61-2-1, § 61-11-8.

⁷ W. Va. Code § 61-2-9(a).

two counts of kidnapping,⁸ use or presentation of a firearm during the commission of a felony,⁹ and third-degree arson.¹⁰

In early November 2022, a jury convicted Mr. Dolen of all counts except the malicious assault count naming Mrs. Adkins as the victim. While many witnesses testified over the six-day trial concerning wide-ranging evidence of the robbery, assault, firearm use, DNA, and the stolen truck and its subsequent burning, our factual recitation concerns only the issues on appeal: (1) facts related to the kidnapping charges; (2) the discovery dispute; (3) the expert testimony; and (4) Mr. Dolen’s motion for a judgment of acquittal on the kidnapping charges, and the related jury instructions.

A. Facts Related to the Kidnapping Charges

Both Mr. and Mrs. Adkins testified about the events that occurred the morning of November 22, 2020. Mr. Adkins, who was seventy-nine years old at the time, explained that he had a garage at the rear of his house full of tools, as well as several pairs of handcuffs on a pegboard and a .22 rifle. One of the pairs of handcuffs was from his employment as a city police officer in Huntington, where he began working in 1965.

⁸ W. Va. Code § 61-2-14a (eff. 2017).

⁹ W. Va. Code § 61-7-15a.

¹⁰ W. Va. Code § 61-3-3.

Another set was older than the others and used a different type of key. He kept the keys to the handcuffs in a jewelry box inside his bedroom.

He told the jury that on November 22, 2020, the first thing he remembered was that the perpetrator “bumped the bed” and woke him up, as he could not “hear anything without [his] hearing aids.” Mr. Adkins said, “when I opened my eyes he was standing over top of me with the rifle coming down[.]” He “didn’t get a good look” at the person. He only saw “the gun coming down in [his] face[.]” yet he described his perpetrator as “a big guy with -- looked like [he] had a mask on[.]” The perpetrator hit him in the head with the rifle several times, resulting in four gashes, and Mr. Adkins lost consciousness.

Mr. Adkins explained that at some point, he “[came] to,” and the perpetrator hit him again, then put the barrel of the gun in his face. Mr. Adkins saw the perpetrator’s finger on the trigger, so he grabbed the barrel end of the gun and held onto it, and as the perpetrator pulled it away, Mr. Adkins held onto the sight on the end of the barrel.¹¹ Mr. Adkins testified that the last thing he remembered was the gun in his face “and I could see his finger pulling on the trigger[.]” but he could not remember anything else from that morning.

¹¹ Eventually, medical professionals had to cut the sight out of Mr. Adkins’s hand.

He was not alone during the invasion; Mrs. Adkins was down the hall in her bedroom. Mrs. Adkins testified, explaining that at the time of the robbery, she was seventy-six years old and had been married to Mr. Adkins for fifty-six years. At around 8:00 a.m., she was in bed alone, but was awakened by a “good-sized,” “big” man wearing a black mask at the foot of her bed who told her, “you’re being robbed.” He moved toward her and grabbed her arms, and she pounded his chest and started screaming. He hit her with a gun and knocked her out.

When she regained consciousness, she realized something was on her foot or her leg and she could not walk, so she “hobbled or hopped down the hallway[,]” about ten or fifteen feet, dragging her leg, to Mr. Adkins’s room. The last few feet, she crawled.

In Mr. Adkins’s room, she saw the man again. She “backed up against the dresser[,]” on the floor, while Mr. Adkins and the perpetrator were “tussling over a gun,” and “pulling [it] back and forth,” which she later described as a rifle. She saw Mr. Adkins fall onto the floor, and the perpetrator pounded his head with the butt of the gun. She observed the perpetrator come back multiple times to beat Mr. Adkins, and observed him

rummaging through Mr. Adkins's drawers, trying on clothes, and removing a gun from the top drawer.¹²

Eventually, she put Mr. Adkins's head in her lap on a pillow. She explained that the perpetrator handcuffed them both and then handcuffed them together, using multiple pairs of her husband's handcuffs. The perpetrator told her that "within [twelve] minutes after he left there that he would get help for [them] and if [she] called anybody he'd come back and blow [her] head off." He also threw the keys to the handcuffs on the floor.

Mrs. Adkins told the jury that after the perpetrator left, Mr. Adkins unlocked one set of handcuffs but could not unlock the other set. Mr. Adkins was able to get down the hallway to retrieve Mrs. Adkins's phone. She called 911 and crawled to the front door and unlocked it for the responders.

Corporal Brett Jarrett with the Cabell County Sherriff's Department confirmed that he saw handcuffs on Mr. and Mrs. Adkins when he responded to the 911 call, and photographs of the handcuffed victims were admitted into evidence. An EMS

¹² Mr. Adkins had previously testified that the drawer contained two rare pistols; one was his police service weapon, a .357 revolver, while the other was a Colt Mustang .380.

employee also testified that the couple had on handcuffs when he responded to the home. Eventually, both Mr. and Mrs. Adkins went to the hospital via ambulance, having sustained significant injuries. Mrs. Adkins's leg injuries required surgery, and she recounted that she was eventually diagnosed with a broken tibia, a broken piece of bone under her kneecap, and torn ligaments in her foot. When she arrived at the hospital, Mrs. Adkins's hand was bleeding, and the perpetrator had also injured her arm, where, by the time of trial, she still had a scar. The attending physician that cared for Mr. Adkins in the hospital's emergency room stated that Mr. Adkins had "a scalp laceration, skin tears, a subdural hematoma, [a] nasal bone fracture, and a traumatic brain injury." The physician explained that a subdural hematoma "is a blood clot between the skull and the brain." Mr. Adkins also had a foreign body removed from his right hand. Mr. and Mrs. Adkins eventually both went to a skilled nursing rehabilitation unit after their hospital stays.

B. The Discovery Dispute

On day four of the six-day trial, a Friday, outside the presence of the jury the defense team alerted the circuit court to an issue regarding a PowerPoint presentation they received from the State during a break.¹³ The PowerPoint presentation included mapped

¹³ During opening statements, the State told the jury that they would hear from an individual, "Eddie Prichard who is an expert in the area of GPS location data in which the service of AT&T items were retrieved," and this information "puts the defendant in the area of both the robbery, kidnapping . . . , as well as the vehicle fire."

points of cell site locations that a cell phone, with a phone number associated with Mr. Dolen, connected to over the course of November 22, 2020, the day of the crime. The maps in the PowerPoint were based on AT&T call detail records for that phone number. These records included GPS coordinates of the specific cell site locations to which the phone associated with that phone number connected.¹⁴

The State claimed that it had earlier provided the PowerPoint to the defense team, but Mr. Dolen's attorneys disagreed. However, the circuit court had earlier established, on another discovery issue, there were no filings in the case regarding the discovery that was turned over before the trial.¹⁵ Regarding the PowerPoint, the defense attorneys told the court they could not find it, despite "look[ing] through everything[.]" A member of the defense team told the court that they would move to exclude the PowerPoint and "would need an expert witness[.]" thus would need a continuance of the trial. In response, the State explained that the West Virginia Fusion Center ("Fusion Center")¹⁶

¹⁴ In *State v. Johnson*, the Court described, in great detail, how cell phones can be tracked via this type of data. *See generally* 238 W. Va. 580, 797 S.E.2d 557 (2017).

¹⁵ At that prior point in the trial, the circuit court reminded the parties that "[w]henever discovery is handed over by either party, it should be documented in a filing with the [c]ourt." The court explained that the discovery itself does not need to be filed, but "it should be documented what was turned over."

¹⁶ At this proceeding, the State did not provide any details regarding the Fusion Center to the circuit court. The West Virginia Fusion Center's website provides that

created the PowerPoint and Lt. Eddie Prichard with the Huntington Police Department was the only expert known to the assistant prosecutor who was qualified to explain the data.¹⁷ The State further asserted that Mr. Dolen’s counsel “still has the data from AT&T[,]” which was the data source for the PowerPoint: “It’s just basically a collaboration of all of it.” Mr. Dolen’s counsel agreed that they had the AT&T records, “but it’s just a bunch of numbers.” The court asked whether the PowerPoint was necessary, and the State said that “it makes it more presentable[,]” but noted it “could probably use a map” if necessary.

Mr. Dolen filed a motion to exclude the report the following Monday, contending that the State failed to comply with the discovery rules contained in West Virginia Rule of Criminal Procedure 16(a)(1)(E), which requires the State, upon the defendant’s request, to disclose certain information about its expert witnesses, including “a written summary of

A fusion center is a collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorist activity. Intelligence processes through which information is collected, integrated, evaluated, analyzed, and disseminated are a primary focus.

Fusion Center, About Us, <https://fusioncenter.wv.gov/about-us> (last visited Nov. 10, 2025); see W. Va. Code § 15A-12-1 (authorizing statute).

¹⁷ In West Virginia, an expert must testify regarding cell phone cell site historical data: “A witness must be qualified as an expert under Rule 702 of the West Virginia Rules of Evidence in order to present evidence of cell phone historical cell site data.” Syl. Pt. 2, *Johnson*, 238 W. Va. 580, 797 S.E.2d 557.

testimony the state intends to use under Rule 702, 703, or 705 of the Rules of Evidence during its case in chief at trial[.]” and also requires that the summary “describe the witnesses’ opinions, the bases and reasons therefor, and the witnesses’ qualifications.” Mr. Dolen asked the circuit court to exclude the document and to prevent the State from calling an expert witness to “testify as to what the [AT&T] data means,” although he admitted that “[t]he State may certainly introduce the raw data supplied by AT&T[.]”

On the same day, in an afternoon hearing before trial restarted, Mr. Dolen’s counsel reiterated his arguments in the motion. Defense counsel noted that the court *could* grant a continuance to allow the defense to hire its own expert, but that this was “obviously unpalatable to everybody at this stage, especially because we would need a long enough continuance so we can hire our own expert witness.” Ultimately, the defense counsel objected to “any expert testimony concerning the [AT&T] data[.]”

The parties again disagreed on whether the State had previously provided the PowerPoint and information about the expert witness. The State represented that it had received the information from the Fusion Center in a PowerPoint by late May. One of the assistant prosecuting attorneys told the court that she had a discussion with defense counsel in July, advising that “the information that is created by the Fusion Center cannot be testified to by the person who created it because he does not have the qualifications[.]” therefore the State would call Lt. Prichard, who had the requisite qualifications. The State

asserted that it had disclosed the PowerPoint on a thumb drive and placed it in a box in the Circuit Clerk's office for defense counsel to pick up, as it had done with other items of discovery. The defense attorney did not recall this conversation with the assistant prosecutor, explaining that the defense did not have the flash drive containing this information, but did acknowledge that the assistant prosecutor "may have mentioned something about this witness."

The circuit court confirmed that the defense received the subscriber information and the phone records from AT&T that contained the raw data used to create the PowerPoint. A member of the defense team remarked that Mr. Dolen was "not objecting to the raw data[,] but rather to the witness's "interpretation of the data." He explained that "[w]e needed to know how he interpreted the data to know if we needed an expert . . . We have no way to get an expert." He argued, "that's the reason the State . . . has to provide their expert first so the defense . . . can decide whether they need an expert." He continued, stating that "[i]t's [the State witness's] interpretation that [the State] want[s] to put on before the jury, and that's what we object to. It's clearly a violation, a highly prejudicial violation."

In considering how to rule on Mr. Dolen's motion, the court stated,

I've got four reputable attorneys from our bar telling me two completely different stories. Which I don't think anybody

here is lying. I think everybody is telling what they believe to be the truth.

The problem is I've got one side saying it was definitely handed over and one side saying they did not receive it. So I have to look at what the evidence is here.

Clearly, the defendant had access to these phone records. I'm not going to say it's a voluminous amount of phone records because, as I indicated, it's only about a half-inch thick.

The circuit court ultimately determined that it would allow Lt. Prichard to testify about the PowerPoint. The court explained that it would ordinarily exclude an undisclosed report, but the State represented that the PowerPoint was disclosed, "and there are other things that surround this that were clearly disclosed, such as the witness's name, such as the phone records. For whatever reason this one -- this report was not something that could be emailed and was turned over, I guess, on a thumb drive." Concluding that it would "allow the witness to testify to this report[,]," the court recognized that "[o]ne of the remedies that the [c]ourt can have in this situation is to allow the defense to have time to look at the report." The court confirmed that the defense received the PowerPoint on the previous Friday and so at the very least had "a few days to look at it[,]," previously had the phone records, and could have had those records analyzed on its own. The court reiterated that

I want to keep emphasizing for the record that's -- I would not allow a trial by ambush. I have two attorneys telling me this information was handed over and that there were specific

discussions surrounding it. So there's clearly a difference in opinion as to whether this was turned over or not.

The court also acknowledged that the defense could have hired an expert to analyze the AT&T records on its own earlier—even without the State's PowerPoint or expert, due to purported nondisclosure—particularly as the case “appears to be obviously a case of it wasn't me” that Mr. Dolen “appears to be asserting to the jury.”¹⁸ The court reasoned that because the defense “had that access to the phone information,” the defense could have analyzed the data with their own expert “to prove that it wasn't him[.]” In considering the parties' arguments, the court determined that even “if the State had failed to produce the report,” this alleged failure would not have “dampen[ed] the initiative of the defense to have their own independent examination” of the data.¹⁹ The court explained that

¹⁸ By this time in the trial, the defense had elicited that Mr. Dolen asserted to law enforcement that another individual he knew, Jeremy Artrip, called Mr. Dolen about a pressure washing job, had a manslaughter conviction and had served twenty-six years in prison, and had harmed and robbed the Adkinses. Mr. Dolen claimed that Jeremy Artrip had put the stolen items in his truck. The defense also elicited testimony on cross-examination that Mr. Dolen also asserted another man named Jody participated.

Then, the State called Mr. Artrip, who testified he had known Mr. Dolen approximately ten years earlier and had not seen him for ten years, but was working on the day in question and he clocked into work at 8:36 p.m. on Sunday, November 22, 2020; his clock-in and clock-out sheet was admitted into evidence. He also testified he did not serve twenty-six years' imprisonment for manslaughter.

¹⁹ The circuit court also reminded the parties that “discovery should be done more clearly[.]”

the defense still could have had the cell site data analyzed “if they thought this was potential alibi data that could have led to that, known that it was a phone that, I guess, was in his possession.”²⁰

C. The Expert Testimony About Cell Site Data

When trial resumed, Lt. Eddie Prichard testified as the last witness for the State. He explained that he was the crime analyst unit supervisor at the Huntington Police Department, and as part of his duties, processes call detail records from cell phone carriers. Lt. Prichard explained that he received training through the National White Collar Crime Center regarding “call detail records and GPS locations,” which included “how cell networks work, how phones communicate with them, the information you can get from cell phone providers, and how to plot the GPS coordinates which are returned with those call detail records.” Lt. Prichard explained that he has previously testified as an expert about call detail records and GPS locations, and, upon motion by the State, the court qualified him as an expert before the jury, without objection from the defense.

Lt. Prichard explained to the jury that, generally, call detail records are organized by columns, include dates and times of calls, text messages, and data usage, and

²⁰ After some discussion, the State agreed to remove a slide that the defense objected to as prejudicial. Furthermore, as the PowerPoint included some animation that had not been provided the previous Friday, the court allowed Mr. Dolen and his counsel to view the final version of the PowerPoint before showing it to the jury.

include “the GPS location of the tower that the phone communicated with during the call[,]” which was the “same for the data portion,” including “the amount of data that’s transferred from the phone to the cell network on whichever given tower it happens to be.” The State introduced AT&T’s call detail records for a number linked at trial to Mr. Dolen, which the circuit court admitted over the defendant’s objection.²¹

Then, the State introduced a flash drive containing the PowerPoint presentation described above, and a printed version of the presentation, that Lt. Prichard described to the jury as being “prepared by the West Virginia Fusion Center.”²² Lt. Prichard confirmed that he had reviewed the PowerPoint as well as the call detail records “in conjunction” with the PowerPoint. The exhibits were admitted over defense counsel’s renewed objection.

²¹ Mr. Dolen objected on the grounds that Lt. Prichard was “not the proper witness to get this into evidence. He’s not the record’s custodian.” He further argued that the records were not properly authenticated.

The State also introduced AT&T’s “records key” into evidence, which defined the column information on the call detail records, as well as the AT&T Wireless subscriber information, which Lt. Prichard described as “who pays the bills” for specific numbers. These exhibits were both admitted into evidence over the defendant’s objection. Regarding the subscriber information, Mr. Dolen’s counsel argued that “this is not the proper witness to be bringing in AT&T’s records.” Still, the court overruled the objection and admitted the records.

²² The State did not ask Lt. Prichard to explain what the West Virginia Fusion Center was to the jury.

Lt. Prichard explained that the PowerPoint concerned the same telephone number on the previously introduced call detail records and that the Fusion Center received the records and prepared the report based on those records, which “were used in conjunction with the list of cell site locations . . . to illustrate [the] approximate location of the target cell phone when it initiated contact with the network.” He affirmed this information was “consistent” with what he had reviewed himself.

After explaining the significance of the information contained in the records, Lt. Prichard testified about the information associated with the cell phone number at issue. He noted that the “orange circle icons” on a map slide shown to the jury were the cell phone towers from “an online database” that he also had to know when he came up with his conclusions, and he confirmed, when asked by the State, that was “part of the information that [he] get[s] or ha[s] to understand in [his] training.” When the State asked him about the blue pin on a map on the next slide, he explained that was in reference to where the “crime occurred.” Lt. Prichard also explained that the red angles mapped on that slide were “representations of the mapped location of the towers” with which the AT&T phone number “communicated[,]” as shown “in the call detail records[.]” For the next slide, with animation, he stated that it demonstrated the “[t]ime lapse of where the cell phone connected with the cell towers” from approximately 3 a.m. until 10 or 11 a.m. on November 22, 2020. Other slides showed the GPS coordinates, on maps, where the cell phone connected with the cell phone towers, and one other slide had further animation.

The State repeatedly solicited testimony from Lt. Prichard that he confirmed the accuracy of the information on the maps displayed to the jury. For instance, the State asked, regarding one of the particular slides, “if we specifically go to that time . . . in the call detail records[,] . . . the information contained in here is consistent with what you have observed?” Lt. Prichard confirmed that it was. And regarding another map, again when Lt. Prichard explained it, the State asked, “And, again, this is consistent with what the call detail records that you have in front of you as well as your look into the specific areas?” Lt. Prichard responded, answering,

Yes. I plotted them myself on Google Maps to verify the accuracy of the Fusion Center’s work here, and I also loaded these call detail records into our program, which is called PenLink, where it has a mapping function to it also, and it came back with the same results as the program that the Fusion Center used to make this PowerPoint.

In its following question, the State asked, “And this is sort of backing up what you are seeing through these call detail records?” Lt. Prichard responded, “Yes it is. It was all done with the call detail records right here.” On cross-examination, Lt. Prichard confirmed that he did not prepare the PowerPoint. Defense counsel asked him, “And your job was to review what the Fusion Center did and come here and tell the jury what the Fusion Center did; is that fair to say?” He responded affirmatively. The State rested after Lt. Prichard testified.

D. Denied Motion for a Judgment of Acquittal Regarding Kidnapping

After the close of testimony, Mr. Dolen then unsuccessfully moved the court for a judgment of acquittal pursuant to Rule 29 of the West Virginia Rules of Criminal Procedure. Relevant to this appeal, his counsel argued that the State presented insufficient evidence to convict him of Counts 9 and 10, the individual counts of kidnapping Mr. and Mrs. Adkins. His attorney contended that, while the victims were restrained by force, “kidnapping requires more than merely restraining somebody[,]” and, tracking some of the elements of kidnapping applicable at the time, argued that “there was no intent to hold anybody for ransom, to transport them with the intent to inflict injury, or to terrorize the victims.”²³ The State responded that Mr. Dolen’s conduct fell within the statutory language, because he sought a concession by telling the victims not to seek help. The State argued

²³ At the time of the offense, the statute criminalizing kidnapping provided:

(a) Any person who unlawfully takes custody of, conceals, confines or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation or enticement with the intent:

(1) To hold another person for ransom, reward or concession;

(2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or

(3) To use another person as a shield or hostage, is guilty of a felony

W. Va. Code § 61-2-14a(a) (eff. 2017).

that this was a concession in that the victims “had to not receive treatment nor in any way feel like they could go forward or leave at that time due to the fact that they were threatened with their life.” The circuit court denied Mr. Dolen’s motion, finding that there was substantial evidence “that a jury might find the defendant guilty beyond a reasonable doubt.” Mr. Dolen did not raise any argument to the circuit court regarding whether the kidnapping was incidental to the robbery.

E. Jury Instructions Regarding Kidnapping

At the end of the trial, the circuit court instructed the jury, and, again relevant to this appeal, provided the jury with the elements of kidnapping relating to Counts 9 and 10 of the indictment. First, the court defined kidnapping generally, which echoed the statutory language in effect at the time of the offense:

kidnapping, as that term is used in the indictment, is committed when any person by force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation, or enticement takes custody of, conceals, confines, or restrains another person against his or her will with the intent to hold such person for ransom, reward, or concession, or to transport such person with the intent to inflict bodily injury or to terrorize the victim or another person or to use such person as a shield or hostage.

Then, the court, for each count, listed the elements of kidnapping, focusing on the “ransom, reward, or concession” prong:

Under Count 9 of the indictment, before Nathan Dolen can be convicted of kidnapping the State must prove to the satisfaction of the jury beyond a reasonable doubt that Nathan Dolen, in Cabell County, West Virginia, on or about November

22nd, 2020, did by force, threat of force and/or duress take custody of, confine, conceal, or otherwise restrain Ronald Adkins with the intent to hold Ronald Adkins for any ransom, reward, or concession.

For Count 10, the court told the jury that “[t]he definition of kidnapping is exactly the same as I just read on the previous count,” but again instructed the jury on “the elements that apply for this count of kidnapping”:

Under Count 10 of the indictment, before Nathan Dolen can be convicted of kidnapping, the State must prove to the satisfaction of the jury beyond a reasonable doubt that Nathan Dolen, in Cabell County, West Virginia, on or about November 22nd, 2020, did by force, threat of force and/or duress take custody of, confine, conceal, or otherwise restrain Orlinda Adkins with the intent to hold Orlinda Adkins for any ransom, reward, or concession.

Mr. Dolen was ultimately convicted of each count except the malicious assault of Mrs. Adkins and was later sentenced by the circuit court. This appeal followed.

II.

STANDARD OF REVIEW

Because each of the four errors alleged by Mr. Dolen requires a separate standard of review, we address the applicable standard in each discussion below.

III.

DISCUSSION

Mr. Dolen's first two assignments of error focus on discovery issues and the admission of the PowerPoint exhibit, while the second two errors challenge his kidnapping convictions. We address each in turn.

A. The Circuit Court Did Not Abuse its Discretion Relating to Discovery Matters

Mr. Dolen asserts that the circuit court abused its discretion by admitting the cell phone data PowerPoint into evidence, despite the State's purported violation of its discovery disclosure requirements. We find no abuse of discretion by the circuit court.

As a preliminary matter, we recognize that Rule 16 of the West Virginia Rules of Criminal Procedure governs "[d]iscovery and inspection" in criminal cases and requires the State to turn over certain evidence when requested by the defendant.²⁴ Certainly, here Mr. Dolen requested that information relating to expert witnesses be turned over pursuant to Rule 16(a)(1)(E), including his request for a written summary of the

²⁴ Rule 16 of the West Virginia Rules of Criminal Procedure is the only rule, statute, or case cited in Mr. Dolen's argument regarding the discovery issue. To the extent that he also argues that a proponent of evidence has a duty to prove the evidence was provided to the other party, he cites no support for this proposition and only recites the circuit court's earlier discussion regarding a different document, relating to an earlier witness, that the court did not admit.

expert’s testimony and “the witnesses’ opinions, the bases and reasons therefor, and the witnesses’ qualifications.”

When reviewing allegations of discovery violations, we consider whether the circuit court abused its discretion. *See State ex rel. Rusen v. Hill*, 193 W. Va. 133, 140, 454 S.E.2d 427, 434 (1994).²⁵ The standard we typically employ—when a discovery violation has occurred—focuses on whether the nondisclosure prejudices the defendant. *See* Syl. Pt. 2, *State v. Grimm*, 165 W. Va. 547, 270 S.E.2d 173 (1980).²⁶ Specifically, “[t]he traditional appellate standard for determining prejudice for discovery violations under Rule 16 of the West Virginia Rules of Criminal Procedure involves a two-pronged analysis: (1) did the

²⁵ In *State ex rel. Rusen v. Hill*, the Court determined that the circuit court did not abuse its discretion in dismissing an indictment after the State repeatedly failed to disclose certain items requested by the defendant. 193 W. Va. 133, 144, 454 S.E.2d 427, 438 (1994).

Relatedly, “[r]ulings on the admissibility of evidence are largely within a trial court’s sound discretion and should not be disturbed unless there has been an abuse of discretion.” Syl. Pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983) (quoting *State v. Louk*, 171 W. Va. 639, 643, 301 S.E.2d 596, 599 (1983), *overruled on other grounds by State v. Jenkins*, 191 W. Va. 87, 443 S.E.2d 244 (1994)).

²⁶ Syllabus Point 2 from *State v. Grimm*, 165 W. Va. 547, 270 S.E.2d 173 (1980) provides, in full,

When a trial court grants a pre-trial discovery motion requiring the prosecution to disclose evidence in its possession, non-disclosure by the prosecution is fatal to its case where such non-disclosure is prejudicial. The nondisclosure is prejudicial where the defense is surprised on a material issue and where the failure to make the disclosure hampers the preparation and presentation of the defendant’s case.

non-disclosure surprise the defendant on a material fact, and (2) did it hamper the preparation and presentation of the defendant's case." Syl. Pt. 2, *Rusen*, 193 W. Va. 133, 454 S.E.2d 427. This standard informs our analysis of the discovery issue.

Here, the circuit court made no specific finding that the State failed to disclose the PowerPoint to the defense. Instead, the court particularly avoided making a specific finding or a credibility determination regarding the attorneys or the disclosure. The court acknowledged that it had "four reputable attorneys from our bar telling me two completely different stories[,]” and did not “think anybody here is lying[,]” but rather that the lawyers were stating “what they believe to be the truth.” We decline to resolve that heavily disputed and credibility-laden issue in the first instance on appeal.

Even without a finding by the circuit court regarding whether the report was disclosed by the State prior to trial, we find no abuse of discretion in the circuit court's admission of the PowerPoint over Mr. Dolen's motion to exclude it. Even without a ruling on disclosure, the record reflects that court carefully considered the potential prejudice to Mr. Dolen and whether the PowerPoint “surprise[d] the defendant on a material fact” or “hamper[ed] the preparation and presentation” of his case. *See* Syl. Pt. 2, in part, *Rusen*, 193 W. Va. 133, 454 S.E.2d 427. The court confirmed, repeatedly, that Mr. Dolen received the AT&T call detail records, which contained the GPS coordinates that formed the basis for the PowerPoint presentation. The court also recognized that the defense, at the very

least, had a weekend to examine the PowerPoint, as it received the presentation on Friday and the trial did not begin again until after lunch on Monday. The court also made findings that even if there was a failure by the State to disclose the PowerPoint, that alleged nondisclosure would not “dampen the initiative of the defense to have their own independent examination of the evidence[.]” The court reasoned that the examination “could have still been done if they thought this was potential alibi data[.]” The court recognized that the defense’s interest in pursuing this line of defense was especially heightened given that Mr. Dolen appeared to be arguing that “it wasn’t me[.]”

The circuit court’s contemplation of (1) the attorneys’ proffers; (2) the availability of the AT&T records earlier provided to the defense, and their related potential evidentiary value; and (3) the undisputed amount of time the defendant had to review the PowerPoint, demonstrate that the court deliberately contemplated Mr. Dolen’s motion and found that the purported nondisclosure did not prejudice him, as it neither surprised him on a material fact nor hampered his defense. *See id.* To the extent that Mr. Dolen is also arguing that the court erred by allowing the State to introduce the PowerPoint by conflating the “raw data” from AT&T with “the equivalent of expert testimony,” we disagree. Mr. Dolen’s characterization of the circuit court’s ruling ignores the court’s nuanced consideration of his motion to exclude. For these reasons, the circuit court did not abuse its discretion when admitting the PowerPoint presentation over Mr. Dolen’s objection.

***B. Lt. Prichard's Testimony and the Admission of the PowerPoint
Did Not Violate the Confrontation Clause***

We next consider Mr. Dolen's argument that the introduction of the PowerPoint presentation constituted a Confrontation Clause violation, which raises constitutional concerns. Mr. Dolen, when he objected to the admission of the PowerPoint, only renewed his earlier objection, and did not raise a specific Confrontation Clause claim.²⁷ We recognize that typically, "[a] trial court's evidentiary rulings, as well as its application of the Rules of Evidence, are subject to review under an abuse of discretion standard." Syl. Pt. 4, *State v. Rodoussakis*, 204 W. Va. 58, 511 S.E.2d 469 (1998). However, "[f]ailure to observe a constitutional right constitutes reversible error unless it

²⁷ At trial, defense counsel "renew[ed] our earlier objection to this" when the State sought to admit the PowerPoint. Here, the State does not address Mr. Dolen's failure to raise a specific objection based upon the purported violation of the Confrontation Clause before the circuit court, even though, in his brief, Mr. Dolen admits to "not using the word 'confrontation[.]'" Instead, on appeal, Mr. Dolen notes that he "objected twice to Lt. Prichard not being 'the proper witness' to introduce AT&T data[.]" and cites to the part of the record where he objected to Lt. Prichard being the witness for the AT&T exhibits: the wireless subscriber information and the AT&T call detail records. Still, the Court has recognized that

When a defendant assigns an error in a criminal case for the first time on direct appeal, the state does not object to the assignment of error and actually briefs the matter, and the record is adequately developed on the issue, this Court may, in its discretion, review the merits of the assignment of error.

Syl. Pt. 3. *State v. Salmons*, 203 W. Va. 561, 509 S.E.2d 842 (1998).

can be shown that the error was harmless beyond a reasonable doubt.”²⁸ Syl. Pt. 5, *State ex rel. Grob v. Blair*, 158 W. Va. 647, 214 S.E.2d 330 (1975); Syl. Pt. 2, *State v. Mechling*, 219 W. Va. 366, 633 S.E.2d 311 (2006), *holding modified on other grounds by State v. Jako*, 245 W. Va. 625, 862 S.E.2d 474 (2021).

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]” Likewise, Section 14 of Article III of the West Virginia Constitution provides that, in criminal trials, “the accused shall . . . be confronted with the witnesses against him[.]” And, as we have recognized, “[t]he Sixth Amendment to the United States Constitution guarantees an accused the right to confront the witnesses against him. The Sixth Amendment right of confrontation includes the right of cross-examination.” Syl. Pt. 1, *State v. Mullens*, 179 W. Va. 567, 371 S.E.2d 64 (1988).

²⁸ The State points out that the Court has recently provided that “[t]hree separate levels of scrutiny apply to Confrontation Clause claims: The circuit court’s order is reviewed for abuse of discretion; its factual findings are reviewed for clear error; and its legal rulings are reviewed de novo.” *State v. Browning*, No. 22-710, 2025 WL 1433770, at *6 (W. Va. May 19, 2025) (memorandum decision) (quoting *State v. Martin*, No. 13-0112, 2013 WL 5676628, at *2 (W. Va. Oct. 18, 2013) (memorandum decision)). However, the circuit court made no ruling regarding any potential Confrontation Clause violation, because, as we mention in *supra* n.27, as Mr. Dolen did not specifically raise this issue at trial and objected to the report on other grounds. Thus, we cannot apply this three-level standard of review proposed by the State.

The United States and West Virginia Constitutions both preclude the admission of a testimonial statement of a witness who does not testify, unless the witness is unavailable and the defendant earlier had an opportunity to cross-examine the witness:

Pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), the Confrontation Clause contained within the Sixth Amendment to the *United States Constitution* and Section 14 of Article III of the *West Virginia Constitution* bars the admission of a testimonial statement by a witness who does not appear at trial, unless the witness is unavailable to testify and the accused had a prior opportunity to cross-examine the witness.

Syl. Pt. 6, *Mechling*, 219 W. Va. 366, 633 S.E.2d 311. Mr. Dolen asserts that because Lt. Prichard, the testifying expert, did not prepare the PowerPoint mapping the cell site data, and Mr. Dolen could not cross-examine the person who prepared the report, Mr. Dolen's constitutional right to confront the witness against him was violated. We disagree.

The cases relied on by Mr. Dolen—*Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), *State v. Kennedy*, 229 W. Va. 756, 735 S.E.2d 905 (2012), and *Smith v. Arizona*, 602 U.S. 779 (2024)—all concern forensic tests on physical evidence (e.g., controlled substance testing, blood testing, and an autopsy), and to the extent the reviewing courts found Confrontation Clause violations, they are distinguishable. In those cases, a witness testified at trial about *another* expert's prior results from testing performed on physical samples by that other expert, or the prosecution presented documents, created by forensic analysts and concerning physical

evidence, without also calling certain witnesses to testify or be cross-examined at trial. In passing, Mr. Dolen states that the Supreme Court of the United States, in *Melendez-Diaz*, requires that experts “who testify as to drug quantities must appear in court[,]” without further discussion.²⁹ He also states that “laboratory technicians who conduct blood alcohol analysis are subject to the same constitutional safeguards,” citing, again without further discussion, *Bullcoming*.³⁰ These cases generally recognize that, to introduce results from forensic testing of physical evidence, the Confrontation Clause requires that the expert who performed the testing testify at trial.

Still, the Court’s determination in *State v. Kennedy*, particularly when considered along with *Smith v. Arizona*, exemplify the distinction between forensic expert

²⁹ In *Melendez-Diaz v. Massachusetts*, the Supreme Court considered whether the government could introduce notarized “certificates of analysis” of controlled substances in a criminal case. 557 U.S. 305, 308 (2009). The Supreme Court found that the documents were testimonial, “the analysts were ‘witnesses[,]’” and finally, “[a]bsent a showing that the analysts were unavailable to testify at trial *and* that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to “‘be confronted with’” the analysts at trial.” *Id.* at 311 (quoting *Crawford v. Washington*, 541 U.S. 36, 54 (2004)).

³⁰ In *Bullcoming v. New Mexico*, decided two years after *Melendez-Diaz*, the Supreme Court considered a certified blood-alcohol analysis report, and “whether the Confrontation Clause permits the prosecution to introduce a forensic laboratory report containing a testimonial certification—made for the purpose of proving a particular fact—through the in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification.” 564 U.S. 647, 652 (2011). The Supreme Court resolved that a defendant has a right to confront “the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist.” *Id.*

testimony that violates the Confrontation Clause, when that testimony builds on another expert's earlier findings, and the expert testimony regarding data analysis at issue here, which was entirely replicable—and replicated—by the testifying expert. In *State v. Kennedy*, this Court delineated the Confrontation Clause limitations on a testifying expert witness relating to opinions in an autopsy report created by a non-testifying physician. See *generally* 229 W. Va. 756, 735 S.E.2d 905. In *Kennedy*, the State called a pathologist to testify regarding a victim's cause of death, yet he testified that he reviewed another physician's autopsy report. *Id.* at 771, 735 S.E.2d at 920. His testimony also included his own opinions, in addition to opinions listed in the autopsy report by the other doctor who did not testify. *Id.* at 772-73, 735 S.E.2d at 921-22. The Court found that defendant's confrontation rights were violated when the testifying pathologist was the "transmitter" for the unavailable physician's opinions regarding the cause of death, as the testifying physician simply "read[] or reiterat[ed] the conclusions contained in the report[.]" *Id.* at 771-72, 735 S.E.2d at 920-21.

Notably, for our review here, the Court then distinguished between testimony regarding the *autopsy report's* conclusions and the admission of the autopsy report, which violated the Confrontation Clause, and other opinions given by the testifying pathologist regarding his own opinion after examining admitted autopsy photographs and determining the mechanism of the victim's injury. *Id.* at 772-73, 735 S.E.2d at 921-22. The "original observations and opinions developed by [the testifying pathologist] himself" were not

violative of the Confrontation Clause. *Id.* at 772, 735 S.E.2d at 921. Furthermore, the Court found that the testifying expert's opinion that the victim's injuries "were consistent with being struck by a rock" did *not* violate the Confrontation Clause, as the (1) testifying doctor did not "reference or read" from the other doctor's autopsy report at trial; (2) there was no evidence in the record showing that the testifying doctor "based his opinions regarding a rock as a mechanism of injury on the autopsy report"; and (3) the testifying expert was available to be cross-examined. *Id.* Ultimately, the *Kennedy* Court concluded that "reiterat[ing] the contents of the autopsy report" violated the Confrontation Clause, but allowing "independently formulated opinions[,]" which the defendant could cross-examine, did not violate the Confrontation Clause. *Id.* at 773, 735 S.E.2d at 922.³¹

Likewise, the Supreme Court in *Smith v. Arizona*, which Mr. Dolen submitted as supplemental authority, echoes the reasoning of *Kennedy* in its analysis. The *Smith* Court reiterated that the State also may not introduce the results of a forensic test—in that case, drug testing results—"through a surrogate analyst who did not participate in their creation[,]" even if those results are the basis for the testifying expert's opinion, if they are testimonial. *Smith*, 602 U.S. at 802 (citing *Bullcoming*, 564 U.S. at 663).

³¹ The *Kennedy* Court further explained that the State was not required to produce the original author of the autopsy report for him to be cross-examined on the testifying doctor's opinions. *State v. Kennedy*, 229 W. Va. 756, 772-73, 735 S.E.2d 905, 921-22 (2012).

However, the identified Confrontation Clause violations in the cases cited by Mr. Dolen are all distinguishable from the factual scenario before us—the expert in this case formed an opinion that was his own, based upon his independent review and analysis of AT&T data, but it was presented to the jury through a PowerPoint that he did not create. In short, Lt. Prichard testified about plotting locations on a map, which indicated the cell site where the cell phone connected, based on data received from AT&T, that he replicated. While some unidentified person at the Fusion Center created the map, the analysis of the AT&T data was completely recreated by Lt. Prichard—which he repeatedly confirmed throughout his testimony. Lt. Prichard did not testify as a surrogate for someone at the Fusion Center, but as an expert who independently reviewed, replicated, and confirmed the accuracy of the information presented in the PowerPoint. And unlike any of the above-mentioned cases, no forensic tests of physical evidence—such as controlled substances or DNA—were involved and subsequently relied on at trial by another expert. As the Supreme Court noted in *Smith*, the Confrontation Clause may be violated if an out-of-court statement by another expert is the “basis” for an expert’s opinion. 602 U.S. at 802. Yet, in this case, Lt. Prichard did not rely on any prior analyst’s tests and determinations to create his own opinions. Rather, Lt. Prichard explained that he compared his analysis of the AT&T data to the PowerPoint’s visual depiction of the cell site locations and came to *identical* conclusions, independently, noting that he plotted the data points on Google Maps “to verify the accuracy of the Fusion Center’s work[,]” and also used his own program and mapping function to analyze the call detail records. See *United States v. Soto*, 720 F.3d 51,

59-60 (1st Cir. 2013) (finding no Sixth Amendment violation when an agent separately examined a computer and testified as to his results). This analysis resulted in the same information that was also on the PowerPoint.

Lt. Prichard testified as to his own opinions by plotting the cell site data with his own software.³² His testimony required no reliance on another expert's prior testimonial statements, as he analyzed the call detail records himself, and he was available for cross-examination, satisfying the Confrontation Clause's requirements. *See* Syl. Pt. 1, *Mullens*, 179 W. Va. 567, 371 S.E.2d 64. Thus, his testimony and the admission of the PowerPoint was not a violation of the Confrontation Clause.

C. Sufficient Evidence Supported the Kidnapping Convictions

We next review, and reject, Mr. Dolen's assertion that his kidnapping convictions must be reversed because the State presented insufficient evidence to meet the applicable prong of the then-effective kidnapping statute: the restraint of a person with the intent to hold that person for a ransom, reward, or concession. *See* W. Va. Code § 61-2-14a(a)(1) (eff. 2017).

³² Mr. Dolen, in his brief, even admits that that Lt. Prichard "could have viewed the expert report and testified as to his own opinions from sources outside the expert report (such as his plotting of the cell data with his own software)[.]" Which is exactly what Lt. Prichard did. Still, as this issue has not been adequately raised here, we make no finding whether the PowerPoint was an expert report.

When considering an appeal arguing that the State lacked sufficient evidence to support a conviction, we “view[] the evidence in the light most favorable to the prosecution,” then consider whether “any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.” Syl. Pt. 1, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). As we have repeatedly explained, when challenging the sufficiency of the evidence, defendants have a “heavy burden”:

A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.

Syl. Pt. 3, *id.*

For the purposes of this appeal and our analysis, we consider only the first prong of the kidnapping statute in effect at the time of the offense, as that is the prong on

which the court instructed the jury.³³ The applicable language of the kidnapping statute provides, in relevant part, that:

(a) Any person who unlawfully takes custody of, conceals, confines or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation or enticement with the intent:

(1) To hold another person for ransom, reward or concession;

. . . is guilty of a felony[.]

W. Va. Code § 61-2-14a(a)(1) (eff. 2017).³⁴

When interpreting a prior version of the kidnapping statute that used the language “any concession or advantage of any sort,” this Court acknowledged that the intent to demand a concession may have an expansive meaning: “[a]lthough a sexual

³³ Mr. Dolen’s counsel conceded at oral argument that the jury was properly instructed as to the elements of kidnapping.

³⁴ We note that Mr. Dolen’s brief quotes a more recent version of the statute. To the extent that Mr. Dolen now argues that there was no proof that his restraint of the victims was to terrorize them, in turn applying a newer version of the statute, he applies statutory language that was not in effect at the time of the offense. At the time of the offense the terrorize prong also noted that the restraint must have been done with the intent “[t]o transport another person with the intent to . . . terrorize the victim or another person.” W. Va. Code § 61-2-14a(a)(2) (eff. 2017) (emphasis added); see *State v. Woodrum*, 243 W. Va. 503, 506, 845 S.E.2d 278, 281 (2020) (noting, for a version of the statute with that operative language, the intent to terrorize also requires the intent to transport). Further, as Mr. Dolen focuses his argument on the concession prong of the statute, and the jury was particularly instructed as to that prong of the statute, we need not weigh in on this inapplicable argument regarding terrorizing, nor the State’s inapplicable response. Finally, we recognize that the statute was amended in 2021 and 2024.

purpose or motivation has been held to satisfy kidnapping statutes requiring such an intent, the intent to demand a concession or advantage has a much broader meaning and *may encompass other benefits or purposes as well.*” *State v. Hanna*, 180 W. Va. 598, 605, 378 S.E.2d 640, 647 (1989) (citations omitted) (emphasis added); *United States v. D’Arco*, No. 97-4216, 1998 WL 66592, at *3, 139 F.3d 894 (4th Cir. Feb 19, 1998) (unpublished opinion) (per curiam) (citing *Hanna* when affirming the district court’s finding that a defendant violated the concession prong of the kidnapping statute while he was on federal supervised release).

The State presented evidence for each element supporting the jury’s finding that, in accordance with their instructions, Mr. Dolen, “did by force, threat of force and/or duress take custody of, confine, conceal, or otherwise restrain” the Adkinses “with the intent to hold” them “for any ransom, reward, or concession.” First, Mr. Dolen acknowledges that the victims were restrained. And certainly, there was a plethora of evidence regarding the restraint of the victims—and evidence of the handcuffs he placed on the victims—from both first responders at the scene as well as from Mrs. Adkins herself. Taken in “the light most favorable to the prosecution[,]” the evidence also showed that he restrained them *with the intent to hold them for a concession* from the couple. See Syl. Pt. 3, in part, *Guthrie*, 194 W. Va. 657, 461 S.E.2d 163. Mr. Dolen argues that “the State simply misapplied the definition of concession[,]” because, in his view, the perpetrator

gained no advantage from the concession, only the restraint itself.³⁵ Yet, he strategically ignores his threat of violence seeking a concession from the couple—that they stay restrained, and not seek help, and in exchange he would not kill them. Mrs. Adkins testified that after the perpetrator handcuffed the couple, he told them that he would call for help twelve minutes after he left, yet threatened to kill Mrs. Adkins if she called someone herself. She told the jury that as the perpetrator was leaving the house, he told her that “if I called anybody he’d come back and blow my head off.”³⁶ Here, the jury was properly instructed as to the elements of kidnapping, particularly the concession prong, and there was evidence that Mr. Dolen intended to hold them for a concession—the evidence, taken in the light most favorable to the State, shows that he intended the Adkinses to stay restrained after he left for a period, as the couple was severely injured, yet he told Mrs. Adkins not call anyone in exchange for him not coming back to shoot her. In other words, the concession was, as the State argued at closing, that they not seek help or leave, because if they did, they would be killed. Taking the evidence in the light most favorable to the

³⁵ To the extent that Mr. Dolen argues that the meaning of concession instead involves another person “*somewhere else* acced[ing] to the kidnappers,” he offers no legal support for this argument, nor any suggestion that he offered this definition as a jury instruction to the circuit court.

³⁶ Mr. Dolen offers, as an example of an acceptable reading of the kidnapping statute, that a concession could be found if the kidnapper said “I will let you go when you say you are sorry.” We find no meaningful difference between this example and what Mrs. Adkins testified to in front of the jury.

State, we refuse to disturb the properly instructed jury's verdict based upon Mr. Dolen's insufficiency argument.

D. The Defendant Failed to Preserve His Argument that the Kidnappings Were Incidental to the Robbery

Finally, Mr. Dolen briefly argues, in the alternative, that the kidnappings were simply incidental to the robbery, and therefore the kidnapping convictions should be set aside. He bases his argument on our prior holding in Syllabus Point 2 of *State v. Miller*, 175 W. Va. 616, 336 S.E.2d 910 (1985), which provides a limitation on kidnapping offenses when they are “incidental” to other crimes:

In interpreting and applying a generally worded kidnapping statute, such as [West Virginia Code § 61-2-14a], in a situation where another offense was committed, some reasonable limitations on the broad scope of kidnapping must be developed. The general rule is that a kidnapping has not been committed when it is incidental to another crime. In deciding whether the acts that technically constitute kidnapping were incidental to another crime, courts examine the length of time the victim was held or moved, the distance the victim was forced to move, the location and environment of the place the victim was detained, and the exposure of the victim to an increased risk of harm.

We have previously examined this issue through the lens of the sufficiency of the evidence. *State v. Lewis*, 238 W. Va. 627, 638, 797 S.E.2d 604, 615 (2017). Yet, as the State notes in its brief, Mr. Dolen did not raise this argument before the circuit court. Instead, he argued that the State presented insufficient evidence on other grounds when he

asked for a judgment of acquittal on the kidnapping charges pursuant to Rule 29 of the West Virginia Rules of Criminal Procedure. Then, he argued that that kidnapping requires more than restraint, and that the State failed to provide any evidence that the kidnapper had an intent “to hold anybody for ransom, to transport them with the intent to inflict injury, or to terrorize them.” As we have recognized, “[t]o preserve an issue for appellate review, a party must articulate it with such sufficient distinctiveness to alert a circuit court to the nature of the claimed defect.” Syl. Pt. 1, *State v. Sites*, 241 W. Va. 430, 825 S.E.2d 758, (2019) (quoting Syl. Pt. 2, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996), and Syl. Pt. 10, *State v. Shrewsbury*, 213 W. Va. 327, 582 S.E.2d 774 (2003) (per curiam)); see *State v. Redman*, No. 15-1039, 2017 WL 678854, at *7 n.3 (W. Va. Feb. 21, 2017) (memorandum decision) (refusing to address, on appeal, issues that the defendant failed to raise “as an issue in his motions for judgment of acquittal”). For these reasons, we do not review this argument raised for the first time on appeal.

IV.

CONCLUSION

For the reasons explained above, we affirm the March 15, 2023, order of the Circuit Court of Cabell County sentencing Mr. Dolen for his convictions of entry of a building other than a dwelling, grand larceny, burglary, two counts of first-degree robbery, attempted first-degree murder, malicious assault, two counts of kidnapping, use or presentment of a firearm during the commission of a felony, grand larceny, and third-degree arson.

Affirmed.