

Circuit Court for Queen Anne's County  
Case No. CR-16-165

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2415

September Term, 2016

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JEFFREY TAYLOR

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Leahy,  
Moylan, Charles, E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 3, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Queen Anne’s County, Jeffrey Taylor, appellant, was convicted of two counts of second-degree assault. His sole claim on appeal is that the trial court erred in preventing the defense from eliciting relevant evidence while cross-examining one of the victims. For the reasons that follow, we affirm.

The State presented evidence that, after Taylor assaulted the first victim, he assaulted the second victim while she was on the telephone with the 911 operator. During that assault, the second victim told Taylor: “I’m going to have the Kingsmen fucking kill you.” The second victim later testified that the Kingsmen were a “motorcycle club.” When defense counsel cross-examined the second victim, the following exchange occurred:

DEFENSE COUNSEL: [L]et’s start with the pictures [taken after the incident].  
Those pictures were not taken by the police, right?

THE VICTIM: Correct.

DEFENSE COUNSEL: Those pictures were taken by your boyfriend, Tommy, I believe, right?

THE VICTIM: Yes.

DEFENSE COUNSEL: Tommy, who is in the biker gang Kingsmen –

PROSECUTOR: Objection.

THE COURT: Sustained.

After the trial court sustained the objection, defense counsel did not make an offer of proof.

On appeal, Taylor contends that the issue of whether the second victim’s boyfriend was a member of the Kingsmen was relevant to show whether he had acted in self-defense. However, Maryland Rule 5–103(a)(2) provides that appellate error may not be predicated upon a ruling that excludes evidence unless “the substance of the evidence was made

known to the court by offer on the record or was apparent from the context within which the evidence was offered.” Thus, “a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for review the propriety of the trial court’s decision to exclude the subject evidence.” *Merzbacher v. State*, 346 Md. 391, 416 (1997).

When defense counsel asked the victim whether her boyfriend was a member of the Kingsmen, the State objected, and the court sustained the objection. Counsel then continued questioning the victim about other matters. At no time did defense counsel make any proffer, formal or otherwise, as to the content and materiality of the excluded testimony. Although the nature of defense counsel’s question is clear, the record is devoid of any indication as to how the victim might have responded or how her answer might have established that Taylor acted in self-defense. Consequently, this issue is not preserved for our review. *See Merzbacher*, 346 Md. at 416 (holding that where the witness did not answer the question after the trial court sustained the State’s objection, a proffer was required to preserve the propriety of the trial court’s decision to exclude the evidence because the witness “could have answered the question in any number of ways,” and the Court of Appeals was “in no position . . . to discern what that answer may have been, whether favorable or unfavorable to the defense”).

Moreover, even if the issue were preserved and we were to assume that the second victim would have testified that her boyfriend was a member of the Kingsmen, the trial court did not err in excluding the testimony. Although Taylor claims that the evidence was relevant to bolster his claim of self-defense, the second victim did not make the statement

regarding the Kingsmen until after Taylor started assaulting her and there was no evidence that her boyfriend, or any other member of the Kingsmen, was present during the assault.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR QUEEN ANNE'S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**