UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2691

September Term, 2015

HENRY IZEAR BARNES

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 6, 2017

Convicted by a jury, in the Circuit Court for Anne Arundel County, of second-degree assault and reckless endangerment, Henry Izear Barnes, appellant, presents one question for our review: "Did the trial court err by admitting hearsay testimony that [the victim] told a police officer that Mr. Barnes assaulted him?" We affirm.

There is no dispute that the testimony of the police officer that Dion Dorsey, the victim, identified Barnes as the person, who had assaulted him, was hearsay.[1] Although the record does not disclose the reason why the court overruled defense counsel's hearsay objection, Dorsey's statement, to the police officer, was arguably admissible as an "excited utterance," given the fact that Dorsey had just been stabbed multiple times and was being treated by paramedics at the time he made the statement.[2] Alternatively, the statement may have been admitted as a prior statement of identification under Md. Rule 5-802.1(c).[3]

In any event, even if we were to assume that the statement was inadmissible hearsay, it amounted to no more than "harmless error," given that the statement at issue

[1] "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is not admissible as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802.

[2] Md. Rule 5-803(b)(2) provides that "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the rule against hearsay.

[3] Md. Rule 5-802.1(c) provides that "[a] statement that is one of identification of a person made after perceiving the person" is not excluded by the rule against hearsay as long as the witness testifies at the trial or hearing and is subject to cross-examination.

was merely cumulative of Dorsey's identification of Barnes, at trial, as his assailant, as well as Barnes's admission, on the stand, that he had stabbed Dorsey, though he claimed that he did so in self-defense. The erroneous admission of evidence that tends to prove the same point as other evidence presented during the trial is harmless if "the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded." *Dove v. State,* 415 Md. 727, 743–44 (2010) (citation omitted). We conclude that there was no reasonable possibility that Dorsey's statement to the police officer that it was Barnes, who assaulted him, contributed to the verdict.

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