Circuit Court for Cecil County
Case No.: C-07-CR-17-001256

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 267

September Term, 2018

ERIC ANDRE YOUNG

v.

STATE OF MARYLAND

Wright,*
Kehoe,
Friedman,
JJ.

Opinion by Kehoe, J.

Filed: December 11, 2019

*Wright, Alexander, Jr., J., now retired, participated in the hearing of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

After a bench trial in the Circuit Court for Cecil County, appellant Eric Andre Young was convicted of fourth-degree burglary, second-degree assault, and malicious destruction of property valued less than $1,000. After the court sentenced him to concurrent terms of three years' imprisonment for fourth-degree burglary and second-degree assault and 60 days' imprisonment for malicious destruction of property, Mr. Young noted this appeal, raising two issues, which we have reworded slightly:

> 1. Did the trial court err in permitting the victim's mother to testify about statements made by the victim, which implicated Mr. Young?
>
> 2. Did the trial court abuse its discretion in permitting the State to introduce a screenshot of text messages from the victim's phone, which contained no identifying information and were, according to the victim's testimony, fabricated?

Finding no reversible error, we affirm.

Background

In a light most favorable to the State, as the prevailing party below, the evidence adduced at trial established the following:

Mr. Young and the victim, Taylor Clifton, were in an intimate relationship and lived together in Elkton, Maryland, in a house leased in Ms. Clifton's name. In August 2017, the couple broke up, and Ms. Clifton, with her two young children, went to live with her mother at her mother's rented townhouse in Elkton.

On the morning of August 22, 2017, approximately one week after she had gone to her mother's home, Ms. Clifton returned to the house she had shared with Mr. Young to retrieve clothes for her son. Upon arriving, she discovered Mr. Young "engaged in adult

activity" with a woman she did not know. Mr. Young asked Ms. Clifton to leave, and she did—after she took a change jar, declaring that she needed to "feed [her] children." Once outside, Ms. Clifton slashed the tires on the unknown woman's vehicle and then returned to her mother's home.

Approximately an hour later, Mr. Young appeared at the home of Ms. Clifton's mother. He kicked open the locked front door, dislodging it and splintering the surrounding door frame. He then went upstairs to the master bedroom, where Ms. Clifton was with her younger son, and struck her several times with a broken piece of the door frame, from which a nail was protruding. Before he left, Mr. Young also told her that he was going to shoot Ms. Clifton in her face and "damage all [her] stuff in the house."

After Mr. Young left, Ms. Clifton called 911, and shortly thereafter two police officers responded to the crime scene. One of those first responders, Officer Ben Smith of the Elkton Police Department, found Ms. Clifton "sitting on the front steps smoking a cigarette and crying," with some wounds on her arm. Officer Smith's companion, Officer Fuller,[1] asked Ms. Clifton if she needed medical attention, but she said no.

The officers then asked permission to go inside the house to "take a look," and Ms. Clifton let them in. According to Officer Smith, the "front door had been splintered," and there were pieces of the door on the floor and on the kitchen countertop. When Officer Smith asked where the assault took place, Ms. Clifton led him upstairs to the master

[1] Officer Fuller's first name does not appear in our record of the case.

bedroom, where Officer Smith saw more "wood fiber" on the floor. He also more closely observed Ms. Clifton's injuries, noting that she had suffered a puncture wound on one of her thighs, an abrasion on one of her arms, and a cut on her back that went "all the way from top to bottom."

The police officers persuaded Ms. Clifton to complete a domestic-violence supplemental report, which she signed and dated in the officers' presence. On that form, Ms. Clifton wrote that Mr. Young "[c]ame to [her] mother's, kicked in front door, hit [her] with pieces of wood from broken door frame." She also wrote that the reason Mr. Young had assaulted her was because she had taken a change jar from their residence.

Officer Smith also got Ms. Clifton's permission to take a screenshot of her cell phone, on which was displayed a text conversation between her and Mr. Young. The chat contained several threatening messages. In one of those text messages, Mr. Young told Ms. Clifton she should not be surprised if he were to kick her door in. In a later message, he told her that she could retrieve her belongings but that he had already broken them and that he was "slicin[g]" her couches. The screenshot of these messages was later admitted into evidence, over objection, at Mr. Young's ensuing trial.

Before leaving the scene, Officers Smith and Fuller urged Ms. Clifton to contact a domestic-violence counselor, but she refused. Although Ms. Clifton initially had refused Officer Fuller's suggestion that she seek medical care for her injuries, she later changed her mind and went to the emergency room at Union Hospital in Elkton for treatment. While there, Ms. Clifton was asked to explain how she had sustained her injuries, and she told

medical personnel that her boyfriend had assaulted her and that she had been "hit with a board with nails in it."

Upon being discharged from the hospital, Ms. Clifton called her mother, Solinda Hamilton, and told her that Mr. Young had kicked in the front door and then assaulted her. Later that same day, Ms. Clifton changed her story, telling her mother an unknown woman was responsible for the damage and her injuries.

By the following day, Ms. Clifton and Mr. Young had reconciled, and she returned to live with him in the house they had previously shared. On August 24, 2017, two days after the assault, Ms. Clifton went to the Elkton police station and filed a report, claiming that she previously had lied to the police when telling them that Mr. Young had broken into her mother's home and assaulted her. She now claimed that an unknown woman had perpetrated the crimes.

An indictment was subsequently issued in the Circuit Court for Cecil County, charging Mr. Young with first-, third-, and fourth-degree burglary; first- and second-degree assault; and malicious destruction of property having a value less than $1,000. The matter proceeded to a bench trial, in which the State called three witnesses: Ms. Clifton, Ms. Hamilton, and Officer Smith.

Ms. Clifton claimed at trial that the initial story that she had given to the police was false and that the break-in and assault had been committed by an unknown woman. She also testified that she had fabricated the threatening texts that she had previously claimed were sent by Mr. Young.

Ms. Hamilton, Ms. Clifton's mother, testified next. The State asked whether Ms. Clifton had ever told Ms. Hamilton who had assaulted her daughter. The defense objected on hearsay grounds, and the court initially sustained the objection. The State then concluded its direct examination of Ms. Hamilton. But, during the State's redirect examination, the court called counsel to the bench, and the following ensued:

> THE COURT: I want to hear some thoughts on, [Prosecutor], you objected to when asked about her statement about who assaulted her, and I sustained that, and I think I may have sustained it incorrectly because it could be a prior inconsistent statement.
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> [DEFENSE COUNSEL]: Your Honor, I don't know that that overcomes the hearsay.
>
> [STATE]: Well, it does actually.
>
> THE COURT: Well, yeah -- well, it's not hearsay, number one. It's not being offered for the truth of the matter. It's offered for inconsistent statement. But I don't know if it's going to make any difference if she's a liar. If you want to pursue it.
>
> [STATE]: It's for the trier of fact to determine and weigh it.
>
> THE COURT: Yes. Depends on when the statement was made and things of that nature, but I think it's a matter that it's properly admissible as an inconsistent statement.
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> [DEFENSE COUNSEL]: Well, Your Honor, but I don't think [the prosecutor] offered it for that purpose.
>
> THE COURT: I'm not sure. I sustained your objection. I didn't ask for any argument on it. That's why I wanted to open it up. So I may have made a mistake on the ruling by making a ruling like that. Definitely it is hearsay, number one, but if that's not what it's being offered for, it could be admissible. So I will let you, if you want to ask it for that purpose.

The State then was allowed, over defense objection, to elicit Ms. Hamilton's testimony that her daughter had told her two different stories as to who had assaulted her: first, that Mr. Young had done so, and then, later the same day, that an unknown female had done so.

Mr. Young testified on his own behalf. He denied having broken down the door at Ms. Hamilton's home and further denied having assaulted Ms. Clifton. According to Mr. Young, he refused to disclose to Ms. Clifton the identity of the woman with whom he was having intimate relations on the day of the crimes, nor did he, he claimed, disclose Ms. Clifton's identity to that woman, although he did tell her where Ms. Clifton was staying.

Upon the conclusion of trial, the court found Mr. Young guilty of fourth-degree burglary, second-degree assault, and malicious destruction of property having a value less than $1,000. The court recognized that criminal agency was the only disputed issue. After observing that there was "a tremendous amount of inconsistency in the testimony," the trial court addressed the probative value of each witness's testimony. The court first stated that it did not credit Mr. Young's testimony. According to Mr. Young, Ms. Clifton slashed the tires of the unidentified woman, which led the woman to go to Ms. Hamilton's house and assault Ms. Clifton. The court stated:

> [I]t's hard for me to believe that this unknown lady got a ride, got the address and goes barging in [Ms. Hamilton's] house not knowing what she would find when she gets there. I find that extremely difficult to follow. But that was Mr. Young's testimony.

Importantly, the court did not reference Ms. Clifton's inconsistent statements to her mother, noting of Ms. Hamilton's testimony only that she said Mr. Young "didn't have permission to go in [her] house that day." The court continued (emphasis added):

> The turning point in this case, and why I'm convinced beyond a reasonable doubt and to a moral certainty that you are guilty, Mr. Young, is this, all these statements, everybody, and you know, and everybody else that's involved with the court, *everybody lies to the police*. You know, they come in here and what people say to the police, you know, it's almost impossible to reconcile with the truth most days because it changes because of what the police may have heard, what people say they said and things of that nature. But one thing that I have -- people that I -- my experience on the bench and hospital records, *people very, very seldom make up a story as to what happened in an incident when they are seeking help and treatment.* And that's one of the reasons why hospital records are generally admissible into evidence and police reports are not. *So based on that bit of testimony, and I think it's a significant bit of testimony*, and it's enough to convince me that you are the perpetrator of those three crimes in this case, and I'm convinced beyond a reasonable doubt and to a moral certainty that you are guilty of assault in the second degree, malicious destruction of property, and burglary in the fourth degree.

After his sentencing, Mr. Young noted this appeal.

Analysis

1.

Mr. Young contends that the trial court erred in permitting Ms. Clifton's mother, Ms. Hamilton, to testify about inculpatory statements made to her by Ms. Clifton. According to Mr. Young, the testimony at issue was inadmissible, either as impeachment evidence or as substantive evidence, and he further insists that the purported error in admitting Ms. Hamilton's testimony was not harmless, stressing that the court questioned Ms. Hamilton

regarding the timing of Ms. Clifton's conflicting allegations and therefore must have thought it significant.

The State counters that Ms. Hamilton's testimony was admitted for a non-hearsay purpose and that it was admissible for that purpose, and it further contends that the disputed testimony was admissible under the hearsay exception for a statement of "identification of a person made after perceiving the person." Md. Rule 5-802.1(c). The State further asserts that any error was harmless beyond a reasonable doubt, because the testimony at issue concerned a point that was essentially uncontested, namely, that Ms. Clifton initially identified Mr. Young as her assailant but then changed her story, blaming an unidentified female instead.

In light of the fact that the trial court stated that the disputed statements were "not being offered for the truth of the matter," we conclude that they were offered for impeachment purposes and not as substantive evidence. Two closely-related rules govern our analysis: Maryland Rules 5-613 and 5-616.

In pertinent part, Rule 5-616(a)(1) permits a party to attack a witness's credibility by asking questions to prove "that the witness has made statements that are inconsistent with the witness's present testimony." Rule 5-613 sets out the procedure for impeaching a witness's credibility in this fashion. The rule states (emphasis added):

> (a) Examining Witness Concerning Prior Statement. A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the examination (1) the statement, if written, is disclosed to the witness and the parties, or *if the statement is oral, the contents of the*

> *statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness* and (2) the witness is given an opportunity to explain or deny it.
>
> (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Unless the interests of justice otherwise require, *extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met* and the witness has failed to admit having made the statement and (2) unless the statement concerns a non collateral matter.

The Court of Appeals has interpreted Rule 5-613 as establishing four "basic conditions that must be satisfied in order for a party to offer extrinsic evidence of a prior allegedly inconsistent oral statement of a witness." *Brooks v. State*, 439 Md. 698, 716 (2014). Those conditions are: (1) that the content of the statement, and the circumstances under which it was made, including the person(s) to whom it was made, must be disclosed to the witness before the conclusion of that witness's examination; (2) that the witness must be given an opportunity to explain or deny the prior statement; (3) that the witness must fail to admit having made the statement; and (4) that the statement must concern a non-collateral matter. Id. at 717.

Ms. Clifton was never asked during her testimony about her prior statements to her mother, which denied her any opportunity to explain or deny those statements. Because the prosecution failed to establish the appropriate foundation, Ms. Clifton's prior inconsistent statements were not admissible under Rules 5-613 and 5-616. Therefore, in admitting these statements, the trial court erred.

Determining that there was a trial error does not end our analysis, however. Reversal of a criminal conviction for trial error is required "unless the error did not influence the verdict," that is, unless the error was "harmless." *Bellamy v. State*, 403 Md. 308, 332 (2008) (cleaned up). To find an error harmless, the reviewing court, "upon its own independent review of the record, [must be] able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *State v. Heath*, 464 Md. 445, 466 (2019) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). The court must be satisfied that there is "no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Id.* (quoting *Dorsey*, 276 Md. at 659). In the criminal context, the prejudicial effect of an error is presumed, and the burden to show otherwise rests with the State. *Perez v. State*, 420 Md. 57, 66 (2011) (citing *Dove v. State*, 415 Md. 727, 743 (2010)).

Establishing that an error was harmless can be especially challenging when a jury-issued general verdict is challenged. *See Barksdale v. Wilkowsky*, 419 Md. 649, 665 (2011) (noting that under Md. Rule 5-606 "a court cannot 'unbake' the jury verdict and examine the impact of any one ingredient."). But evaluating the effect of erroneously admitted evidence on a bench-trial verdict is easier, if, as in this case, the trial court states the grounds for its decision in open court or by written memorandum. *See* Md. Rule 4-328 ("Although not required, the court [sitting without a jury] may state the grounds for its decision either in open court or by written memorandum.").

The State asserts that the error in this case concerned an issue that was essentially uncontested at trial: that Ms. Clifton initially had accused Mr. Young of the assault but later changed her story and claimed that she had been assaulted by an unknown woman. Mr. Young, on the other hand, attaches great significance to the trial court's questioning of Ms. Hamilton, in which it sought to clarify when Ms. Clifton had made the two inconsistent claims. According to Mr. Young, the court thought it important that Ms. Clifton had made the conflicting statements, and he further claims that the statements made to her mother corroborated the State's version of events, precluding a finding of harmless error.

We think the State has met its burden of establishing the harmlessness of the error beyond a reasonable doubt. First, the trial court, in stating the grounds for its decision, made it clear why it believed Ms. Clifton's initial assertion that Mr. Young had assaulted her and why it discredited her subsequent version of events: Although "everybody lies to the police," the court said, "people very, very seldom make up a story as to what happened in an incident when they are seeking help and treatment." It appears that what was dispositive to the trial court were Ms. Clifton's statements to the medical personnel in the hospital emergency room. The trial court discounted everything else, including the erroneously admitted impeachment testimony, thereby belying Mr. Young's appellate claim that the error bolstered the State's case. Second, this evidence, accepted by the court for the purposes of impeaching Ms. Clifton's testimony, was cumulative. *Cf. Grandison v. State*, 341 Md. 175, 218–19 (1995) ("We shall not find reversible error when objectionable testimony is admitted if the essential contents of that objectionable testimony have already

been established and presented to the jury without objection through the testimony of other witnesses."). Statements inconsistent with Ms. Clifton's testimony at trial—the statements to the officers who responded to the scene and the statements made to the medical personnel at the hospital—were properly admitted. Ms. Clifton also admitted during her testimony that her story about the events of August 22, 2017, had not been consistent.

Under these circumstances, we conclude that there is no reasonable possibility that the erroneous admission of Ms. Clifton's prior inconsistent statements to her mother contributed to the court's guilty verdict. The error of their admission was therefore harmless.

2.

Mr. Young's second argument on appeal is that the circuit court abused its discretion in permitting the State to introduce a screenshot of text messages from Ms. Clifton's cell phone, which contained no identifying information and which, Ms. Clifton would later claim, were fabricated.

Maryland Rule 5-901 governs the authentication of evidence admitted at trial and provides in pertinent part:

> (a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
>
> (b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:

> (1) Testimony of Witness With Knowledge. Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (4) Circumstantial Evidence. Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.

Mr. Young acknowledges that "under Federal Rule 901, from which Maryland Rule 5-901 is derived, the burden of proof for authentication is slight." *Dickens v. State*, 175 Md. App. 231, 239 (2007) (citing *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006)). This "slight" burden of proof for authentication was easily met here. There was circumstantial evidence that the screenshot of Ms. Clifton's cell phone was authentic: Officer Smith testified that Ms. Clifton had told him so, when he responded to the crime scene, and Ms. Clifton acknowledged that she had, indeed, done so. The court was not required to credit Ms. Clifton's subsequent version of events, in which she disclaimed her initial story. Accordingly, the trial court did not abuse its discretion in admitting the screenshot of Ms. Clifton's cell phone, depicting the inculpatory text messages sent to her by Mr. Young.

THE JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.