Circuit Court for Prince George's County
Case No. JA210077

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 664

September Term, 2021

IN RE: O. G.

Beachley,
Albright,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: July 19, 2022

The Circuit Court for Prince George's County, sitting as a juvenile court, found the Appellant, O.G., involved in the delinquent acts of attempted second-degree murder and first-degree assault of N.S. On appeal, O.G. presents one question for our review, which we have rephrased as follows:[1] Did the juvenile court err in permitting N.S. and Officer Hutton to provide opinion testimony regarding the severity of N.S.'s injuries?[2] For the reasons below, we conclude that O.G. waived this question and affirm.

BACKGROUND

On July 26, 2020, N.S and his girlfriend, J., were returning home from a laundromat when O.G. exited a car and approached.[3] O.G. stated that N.S.'s girlfriend flashed him "the finger." N.S. responded that his girlfriend had not done so, and O.G. stabbed him in the stomach. N.S. then ran down the street to his house, and O.G. followed. O.G. fled when N.S.'s brother opened the door to the house. N.S. was

[1] We have rephrased O.G.'s question to reflect the arguments in his brief. The question presented in O.G.'s brief was as follows:

> 1. Did the Juvenile Court err in permitting [N.S.] and Officer Hutton to provide opinion testimony?

[2] Initially, O.G.'s brief also asked this Court whether the juvenile court "abuse[d] its discretion in ordering that O.[G.] be placed in a hardware-secure facility?" After briefing, however, O.G. filed a line withdrawing that question from our consideration.

A "hardware-secure facility" is a Department of Juvenile Services facility that " . . . primarily relies on the use of construction and hardware such as locks, bars and fences to restrict the movement of the youth residing there." *See* https://djs.maryland.gov/Pages/detention/Detention.aspx (last visited July 18, 2022).

[3] N.S. and the State used both "wife" and "girlfriend" when referring to N.S.'s girlfriend, J. During his testimony, N.S. clarified that he and J. are not married.

subsequently taken to the hospital by an ambulance. While at the hospital for eight days, N.S. underwent two surgeries.

On March 24, 2021, the State filed a juvenile delinquency petition charging O.G. with attempted first-degree murder, attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, and wearing and carrying a dangerous weapon with the intent to injure.[4] On April 7, 2021, an amended juvenile petition was filed charging O.G. with attempted second-degree murder and first-degree assault. A two-day adjudicatory hearing took place on May 21 and 24, 2021.

Officer Joshua Hutton, the responding officer, testified at the hearing about N.S.'s condition in the moments after the stabbing. He stated that upon arriving at the scene, he observed N.S. "laying on the ground . . . [r]eeling in pain with some of his intestines hanging out." Officer Hutton responded by "trying to get some space around [N.S.,]" and explained that "[s]ome people were trying to apply pressure, which on that type of wound is not the right course of action, it's actually a detriment a lot of times[.]" When the State asked Officer Hutton if N.S.'s "life was in danger at that point[,]"defense counsel objected:

[THE STATE]: Was his life in danger at that point?

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[4] On September 17, 2020, a grand jury indicted O.G. on attempted second-degree murder and first-degree assault charges. On March 23, 2021, the case was transferred to juvenile court.

[OFFICER HUTTON]: I would say so.

Officer Hutton further testified that he "followed the ambulance to the hospital," because N.S.'s injuries were "life threatening[.]"

Thereafter, N.S. testified about the injuries he sustained from the incident:

[THE STATE]: When you say [O.G.] stabbed you, how did he stab you?

[N.S.]: I don't know, I just saw him doing.

[THE STATE]: And what kind of injury did that inflict?

[N.S.]: Type of injury?

[THE STATE]: How, how did the stabbing affect you? What happened after he stabbed you to your body?

[N.S.]: A lot. I almost died.

[THE STATE]: And when you say I almost died, why do you think that?

[N.S.]: Why?

[DEFENSE COUNSEL]: [O]bjection, Your Honor.

THE COURT: What's the basis?

[DEFENSE COUNSEL]: Your Honor, I mean it sounds to me like he's trying to get him to make a medical conclusion or something. I don't think that's permissible.

THE COURT: What's your response?

[THE STATE]: It seems like a lay person thing to say, I almost died. I'm not asking for a diagnosis, I'm asking him why he felt that way. I believe it's a feeling, I don't believe that's calling for a diagnosis.

THE COURT: All right. The Court's going to overrule the objection. Go ahead, you can answer.

[N.S.]: That if the ambulance hadn't gotten there, I would have died.

> [THE STATE]: [W]as there a lot of blood coming out of you when you were stabbed?
>
> [N.S.]: There actually wasn't a lot of blood. It seemed there must have been part of an intestine or something that flopped and so that was preventing a lot of blood from coming out.
>
> [THE STATE]: Was that intestine out of your body at that point?
>
> [N.S.]: Yes.
>
> [THE STATE]: What kind of fear did you have in that moment?
>
> [N.S.]: That I was going to die.

After explaining that he identified O.G. as the assailant to his girlfriend, N.S. testified again, without objection, about the severity of his injuries:

> [THE STATE]: What else did you say about [O.G.] to your [girlfriend]?
>
> [N.S.]: That he was the one that had done this to me.
>
> [THE STATE]: What do you recall happening after you told your girlfriend . . . that?
>
> [N.S.]: I don't remember anything, I don't remember anything else, I was more dead than alive at that point.

The State presented N.S. with a few photographs and asked him, "are those photographs depicting you in the same or substantially similar condition as when you were in the hospital after the stabbing?" N.S. replied, without objection, "that's me, almost dead."[5] A few moments later, the State asked N.S. if he was awake "at the time

[5] Defense counsel did not object to N.S.'s statement, but objected to the admission of the photographs of N.S. on the basis that N.S. was not conscious when the photographs were taken, so he could not attest to when the photographs were taken. The court overruled that objection, stating that "if you take a photo of me, even if I'm asleep, when I wake up I can say that was me while I was asleep."

those [photographs] were taken," and N.S. answered, again absent an objection, "[n]o. I was almost dead."

The State then questioned N.S. about the surgeries he received after the incident:

> [THE STATE]: That's what I was going to ask, let me repeat, how many surgeries did you have?
>
> [N.S.]: There was the one right where the knife wound was and the other one was the one that saved my life.
>
> [THE STATE]: Your Honor, can I have the Court's permission to have him show the surgical scars and the scars from the stabs?
>
> [THE COURT]: Okay. Go ahead.
>
> [N.S.]: This one.
>
> [THE COURT]: All right. And where is the scar? Where is the . . . what's that, that long scar?
>
> [N.S.]: It's the one that they . . . did in order to cure me from the inside.

Detective Kenneth Johnson was assigned to investigate the case and explained that he went to the hospital two days after the incident to "check on the status of [N.S.]." Detective Johnson testified, without objection, that N.S. "was in critical condition, serious and critical condition" and "was not able to talk [because] he was in too much pain."

During the defense's case, O.G. testified on his own behalf. When asked if he "cut [N.S.] with a knife on July 26[], 2020[,]" O.G. answered "[y]es, sir." During cross-examination, O.G. testified that he threw the knife he used to stab N.S. "in the woods" and "ran down the street." The State then questioned O.G. about what he knew about N.S.'s condition after the incident:

[THE STATE]: Based on the stab, what did you think happened to [N.S.], did you think he was fine?

[O.G.]: No, sir.

At the close of the hearing, the court found O.G. involved in the attempted second-degree murder and first-degree assault of N.S. The court rejected O.G.'s assertion that he acted in self-defense, noting that the evidence was "overwhelming[] that [O.G.] was the aggressor" and that O.G. "intended to cause serious physical injury" to N.S. After a disposition hearing, the court followed Department of Juvenile Services' ("DJS") recommendation and ordered O.G. to be placed at a hardware-secure facility.[6]

This timely appeal followed.

STANDARD OF REVIEW

"[T]he decision to admit lay opinion testimony lies within the sound discretion of the trial court." *Thomas v. State*, 183 Md. App. 152, 174 (2008). That decision will not be disturbed absent a clear abuse of discretion. *Robinson v. State*, 348 Md. 104, 121 (1997) (citations omitted); *see also Randall v. State*, 223 Md. App. 519, 577 (2015) ("We review a [trial] court's ruling on the admissibility of lay testimony for an abuse of discretion."). We have stated that "[a]n abuse of discretion occurs where no reasonable person would

[6] The court never explicitly said that O.G. was a "delinquent child." A "delinquent child is a child who has committed a delinquent act and requires guidance, treatment, or rehabilitation." Md. Code Ann. (1974, 2020 Repl. Vol.), Cts. & Jud. Proc. § 3-8A-01(m) (quotation marks omitted). Nonetheless, such a conclusion may be inferred from the court's finding of involvement and its dispositional finding that O.G. was "getting [the] structure and therapy that [he] clearly [] need[s]" while in detention and "that in terms of [his] . . . rehabilitation, [the hardware-secure facility] is exactly where [he] need[s] to be."

take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *In re W.Y.*, 228 Md. App. 596, 608–09 (2016) (citation and quotation marks omitted).

DISCUSSION

O.G. asserts that the court erred in permitting N.S.'s and Officer Hutton's testimony about the severity of N.S.'s injury because neither were rationally based on their respective perceptions nor helpful, as required under Maryland Rule 5-701, and because neither N.S. nor Officer Hutton "possessed the requisite expertise to offer a medical opinion." The State responds that O.G.'s contentions regarding N.S.'s and Officer Hutton's testimony are waived because O.G. "did not make a timely objection each time testimony on this point was admitted, nor did he request and obtain a continuing objection to such testimony."[7] We agree with the State.

Maryland Rule 4-323 provides that, "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Accordingly, "[c]ase precedent reveals that a party should object to each question or assert a continuing objection to an entire line of questioning." *State v. Robertson*, 463 Md. 342, 366 (2019); *see also Fone v. State*, 233 Md. App. 88, 113 (2017) ("[T]o preserve an objection, a party must either object each time a question concerning the matter is posed or request a continuing objection to the entire line of questioning.") (cleaned up).

[7] O.G. did not argue in his brief that this issue is preserved for our review, nor did he file a reply addressing the State's waiver argument.

As the Court of Appeals has further explained, "[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008) (defendant waived an objection to what he claimed was irrelevant and prejudicial testimony about his purported gang affiliation because "evidence on the same point [was] admitted without objection" at other points of the trial); *see also Williams v. State*, 131 Md. App. 1, 26 (2000) ("When evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection.").

Here, as the State correctly points out, evidence that formed the basis of O.G.'s objections was admitted without objection at other points throughout the hearing. Specifically, while O.G. challenges the admissibility of N.S.'s testimony that "if the ambulance hadn't gotten there, I would have died[,]" as being speculative under Maryland Rule 5-701, testimony to that same effect was admitted moments earlier when N.S. testified, "I almost died"—without any objection from O.G.'s counsel. Thereafter, N.S. testified, again absent objection, that certain photos of him at the hospital were of him, "almost dead[,]" and that one of the surgeries immediately after the incident "saved [his] life" and "cure[d] [him] from the inside."

The same is true for the challenge to Officer Hutton's testimony. After being asked whether N.S.'s life was in danger when he responded to the incident, Officer Hutton responded, "I would say so." O.G. asserts that this statement was improperly admitted because there was "heightened danger that the testimony may have been given unwarranted credibility" given Officer Hutton's status as a police officer. Shortly

thereafter, however, Officer Hutton testified to this same point without any objection, stating that he followed the ambulance to the hospital because N.S.'s injury was "life threatening[.]" O.G. likewise did not object to Detective Johnson's testimony that N.S. "was in critical condition, serious and critical condition," or that N.S. "was not able to talk [because] he was in too much pain." O.G. even provided his *own* testimony that corroborated that evidence: O.G. admitted stabbing N.S. with a knife, and when asked if he thought that N.S. was "fine" after the stabbing, O.G. replied "[n]o, sir."

Accordingly, because testimony on the same points was received without any objection at other occasions during the hearing, O.G. waived the issue. We shall affirm the judgment of the juvenile court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS THE JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.