

Circuit Court for Baltimore City
Case No. 823097005

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 795

September Term, 2023

JACQUELINE HOWELL

v.

STATE OF MARYLAND

Berger,
Leahy,
Ripken,

JJ.

Opinion by Berger, J.

Filed: May 29, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City convicted Appellant, Jacqueline Howell, of second-degree assault. The court sentenced Appellant to 90 days of incarceration, with all but three days suspended, and 18 months of probation. On appeal, Appellant presents one question for our review, which we rephrase as follows:

If preserved, did the trial court properly sustain the prosecutor’s objection to Appellant’s hearsay evidence?¹

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

On the evening of October 14, 2022, Teresa Greene (Appellant’s sister) went to a nightclub in Baltimore City to assist with an event. Outside of the nightclub, Appellant approached Greene while Greene was inside of a vehicle. Greene testified about the altercation that followed: “[Appellant] flung the door open. She straddled her body -- she came into the vehicle, straddled her body across me, and began punching me.” Greene testified that she “never was in a position to offend or defend” and that she “never touched [Appellant] at all, not one time.”

During the assault, Greene recorded the audio of the events with her cell phone. The State introduced that audio recording into evidence and published it to the jury. During the

¹ Appellant’s original question was presented as follows:

Did the trial court abuse its discretion when it sustained a hearsay objection from the State after Howell gave the following testimony during her case-in-chief?

“She [victim] was recording me and the phone was in my face. She unlocked the door to the car. She was threatening to shoot me with the gun.”

recording, Greene stated “[g]et off of me” and “I’m calling the police.” Greene testified that Appellant could be heard on the recording “using profanity[.]”

Appellant testified and asserted a claim of self-defense. Appellant testified that Greene “was recording [Appellant] and the phone was in [Appellant’s] face.” Appellant further testified about the altercation as follows: “I moved the phone out of my face and then [Greene] kicked me, and then I hit [Greene], and then [Greene] kept kicking me and hitting me, and we both kept kicking and hitting each other.”

As part of Appellant’s case, Appellant’s counsel also called Abrionna Dorsey and Jasmine Howell to testify. Dorsey testified that Appellant is her aunt and that Greene is Dorsey’s aunt’s sister. Dorsey testified that Greene was the first aggressor, describing the sequence of events as follows: Greene was recording Appellant with a cell phone, “[a]nd the phone was in [Appellant’s] face. [Appellant] moved the phone. [Greene] kicked [Appellant]. They both started fighting.” To rebut Greene’s testimony that Jasmine Howell (Appellant and Greene’s sister) assisted Appellant in assaulting Greene, Jasmine Howell offered limited testimony to claim that she was not present during the altercation.

Additional facts shall be set forth as necessitated by our consideration of the issue before us on appeal.

DISCUSSION

Appellant claims that the trial court abused its discretion when it sustained the prosecutor’s hearsay objection to Appellant’s testimony that Greene “was threatening to shoot me with the gun.” The State responds that this issue is unpreserved for our review because defense counsel declined the court’s opportunity to respond to the prosecutor’s

objection. The State argues in the alternative that Appellant’s “claim also fails on the merits because the statement she offered was, in fact, hearsay.”

The hearsay objection at issue stems from the following portion of Appellant’s direct examination testimony:

[DEFENSE COUNSEL]: What happened when you saw your sister? What happened between you and her?

[APPELLANT]: Well, she was recording me. She does this a lot.

[THE STATE]: Objection.

THE COURT: Sustained.

[APPELLANT]: Okay. Well, yeah. She was recording me and the phone was in my face. She unlocked the door to the car. She was threatening to shoot me with the gun.

[THE STATE]: Objection. Hearsay.

[APPELLANT]: It’s in the video.

[THE STATE]: Your Honor.

THE COURT: Do you have any response to the objection?

[DEFENSE COUNSEL]: No, Your Honor.

THE COURT: Well, then, the objection is sustained.

Ordinarily, we will not decide an “issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). In addition, when “a party acquiesces in a court’s ruling, there is no basis for appeal from that ruling.” *Simms v. State*, 240 Md. App. 606, 617 (2019). The Supreme Court of Maryland has clarified that “the doctrine of acquiescence—or waiver—is that a *voluntary* act of a party

which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.” *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (2013) (cleaned up). Moreover, “a party who objects to the . . . exclusion of evidence at trial must make the grounds for a different ruling manifest to the trial court at a time when the court can consider those grounds and decide whether to make a different ruling.” *Peterson v. State*, 444 Md. 105, 124-25 (2015).

Here, when the prosecutor objected to Appellant’s testimony on hearsay grounds, the court gave defense counsel a clear opportunity to respond to the objection. Defense counsel, however, declined to respond to the objection. The court then implied that its ruling was based on defense counsel’s lack of a response. Indeed, immediately after defense counsel rejected the court’s opportunity to reply to the prosecutor’s objection, the court stated: “Well, *then*, the objection is sustained.” (Emphasis added.) Under these circumstances, an express refusal to respond to an objection results in waiver of appellate review and acquiescence to the trial court’s ruling on that objection. We agree with the State that, in rejecting the opportunity to respond, Appellant did not “make the grounds for a different ruling manifest to the trial court[.]” *Peterson*, 444 Md. at 124.

For all of these reasons, this issue is unpreserved for our review.

Even if this issue had been preserved for our review, on this record, we would determine that the testimony at issue consisted of hearsay. Md. Rule 5-801(c) defines hearsay as “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(a) defines a statement as “(1) an oral or written assertion or (2) nonverbal conduct of

a person, if it is intended by the person as an assertion.” “Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule.” *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). “Whether evidence is hearsay is an issue of law reviewed *de novo*.” *Bernadyn v. State*, 390 Md. 1, 8 (2005).

On its face, Appellant’s testimony that Greene “was threatening to shoot me with the gun” is an out-of-court statement offered in court to prove the truth of the matter asserted, i.e., the testimony was offered to prove the truth of the assertion that Greene was threatening to shoot Appellant with a gun. To the extent that the testimony might have been offered as nonhearsay (e.g., to show the effect on the listener or as nonassertive nonverbal conduct), and to the extent that the statement might have been subject to a hearsay exception, Appellant was required to preserve those grounds for our review. Md. Rule 8-131(a). Instead, Appellant declined the opportunity to respond to the prosecutor’s objection.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**