

Circuit Court for Baltimore City
Case No.: 118248004

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 951

September Term, 2019

ROBERT COOMBS

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 4, 2020

*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 trial in the Circuit Court for Baltimore City, a jury found Robert Coombs, appellant, guilty of second-degree assault and reckless endangerment.¹ The court sentenced appellant to eight years' imprisonment for second-degree assault and merged, for purposes of sentencing, reckless endangerment.

On appeal, appellant contends that the trial court erred by admitting inadmissible hearsay into evidence, and by restricting his ability to present a defense. We disagree and therefore shall affirm.

Appellant and Myrl Shore, the victim, have known each other for most of their lives. At the time of trial, appellant was sixty-three years old, and the victim was forty-nine. The two had, at times, been friends, but they also had been in several fights with each other.

On the evening of August 6, 2018, the two got into a fight that resulted in the victim being stabbed in the stomach with a knife. The victim said that, after he was approached by appellant and Joey Shore (the victim's cousin) in a driveway, appellant asked the victim if he wanted to "make money." When the victim declined, appellant became angry, and Joey Shore, referring to appellant, started "hollering 'Do what you say you gonna do, Bobby. Do what you say you gonna do.'"

After the victim ducked a punch that appellant threw, the victim threw a punch which landed on appellant's face and knocked him to the ground. The victim then began

¹ The court granted appellant's motion for judgment of acquittal as to one count of malicious destruction of property and one count of disorderly intoxication. The jury acquitted appellant of attempted first-degree murder, attempted second-degree murder, attempted voluntary manslaughter (based on imperfect self-defense), first-degree assault, and wearing and carrying a dangerous weapon openly with intent to injure.

arguing with Joey Shore. Appellant then got up with a knife in his hand and “stuck [the victim] right in [his] stomach.” After the victim got in his junk-hauling truck, appellant climbed on the running board and tried to break the window with the knife while saying “I’m gonna kill you.”

Appellant’s version of the fight was somewhat consistent with the victim’s version except that appellant claimed that the victim started the fight by hitting him in the head with a shiny ratchet. Appellant surmised that the victim did so because appellant had surprised the victim and a woman while they were having sex in the victim’s truck, and the victim wanted to show off for the woman. Also, appellant claimed that, after he was hit, as he was losing consciousness and falling to the ground, he grabbed the truck to hold himself up. Then, out of fear that the victim was going to hit him again, he grabbed something from the victim’s truck bed and swung it at the victim. He denied that he carried a knife. His next memory was waking up in shock trauma.

Hearsay

Appellant first claims that the trial court erred by admitting inadmissible hearsay into evidence when it permitted the victim to testify to Joey Shore’s out of court statement “Do what you say you gonna do, Bobby. Do what you say you gonna do.” Some variation of that statement was testified to on three occasions during trial.

The first occasion came in response to a question asked of the victim on direct examination about whether he knew why appellant and Joey Shore had approached him. The following transpired:

[THE WITNESS]: No, I didn't know anything. Bobby [appellant] approached me and said, "Do you want to make some money?" I said, "No, I'm not interested in making money with you." And then, next thing you know he used foul language, like "F you," and then Joey Shore says –

[DEFENSE]: Objection.

[THE COURT]: Overruled.

[DEFENSE]: Okay.

[THE WITNESS]: Joey Shore starts hollering, "Do what you say you're gonna do, Bobby. Do what you say you're gonna do."

Later, when the victim was asked if he could see whether appellant was carrying anything in his hand as he approached, the following transpired:

[THE WITNESS]: Nothing. So meantime, he swung on me, when he did, I ducked. I hit him. I knocked him down. Okay. His beer can he, sat down on the step before he swung on me. In the meantime, when I knocked him down, Joey Shore is hollering –

[DEFENSE]: Objection.

[STATE]: Mr. Shore –

[THE WITNESS]: Okay.

[THE COURT]: The objection is overruled. Go ahead.

The State did not at that time re-elicite the actual statement that Joey Shore made.

Later on, however, after the victim was asked how he hit appellant, the following occurred:

[THE WITNESS]: Straight fist. Straight, straight to his face. When I did that, it knocked him down to the ground.

Well, in the process, Joey [Shore] is arguing with me now. I'm paying attention to Joey. Right, 'cause Joey's got a lot to say. He's cussing, yelling at me. "Do what you say you gonna do. Do what you say you gonna do, Bob."

So I ain't paying no attention to Bobby, 'cause I knocked him down. Meantime, I'm arguing with him, that's when Bobby got up. When he got up, he had a butcher knife and stuck me right in my stomach.

Appellant did not object to the admission of Joey Shore's out of court statement on this occasion. During the State's re-direct examination of the victim, when the victim was asked what Joey Shore was doing when he was stabbed, the victim once again testified to what Joey Shore said. Appellant lodged a general objection, which was overruled. Immediately thereafter, appellant objected on the ground that "this is asked and answered as well." The court sustained that objection.

In pertinent part, Maryland Rule 4-323(a), states: "An 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." The Court of Appeals has held that when a party objects to evidence, and that objection is overruled, the objection is "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). *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.").

As noted above, during the direct examination of the victim, appellant did not object when, in response to a question about how the victim hit appellant, the victim testified to Joey Shore's out of court statement. By failing to lodge a timely objection on that occasion, appellant failed to preserve his objection to the other occasions when the victim offered

such testimony. Accordingly, this issue is not properly before us on appeal.²

Restriction of the Right to Present a Defense

As noted earlier, appellant claimed that the victim launched the first volley in their August 6, 2018 battle by hitting appellant in the head with a ratchet. On direct examination appellant was asked if he knew why the victim “erupted at you like that.” Appellant responded “Well, me and [the victim] has had a --.” The State then objected and the court sustained that objection.

On cross-examination, the State elicited from appellant that he and the victim had been in a fist fight earlier that same summer where the victim had hit appellant and knocked him down. On re-direct examination, when appellant was asked, in reference to the prior fight, if knew why the victim “was trying to fight” him, the State objected and the court sustained the objection.

Appellant contends on appeal that when the court did not let him explain the circumstances of the prior altercation, the court interfered with his constitutional right to present a defense.

In pertinent part, Maryland Rule 5-103 provides: “(a) Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and ... In case the ruling is one excluding evidence, 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.”

² We note that Mr. Shore’s statement expressing a command was not likely inadmissible hearsay.

Stated another way, the rule contemplates that, unless the substance of the excluded evidence was apparent from the context, “...a proffer of substance and relevance must be made in order to preserve the issue for appeal.” *Pickett v. State*, 222 Md. App. 322, 345 (2015) (citation omitted). “[A] principal purpose of the preservation requirement is to prevent ‘sandbagging’ and to give the trial court the opportunity to correct possible mistakes in its rulings.” *Bazzle v. State*, 426 Md. 541, 562 (2012) (citing *Fisher v. State*, 367 Md. 218, 240 (2001)).

On this record, we simply have no idea what appellant’s responses to the questions posed to him about his prior altercation with the victim would have been. Appellant never made a proffer at trial, the substance of the evidence is not apparent from the context, and appellant does not reveal in his briefs before this Court the substance of the evidence. As a result, his claim of error is not preserved for appeal.

Consequently, we shall affirm the judgments of the circuit court.

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