

Circuit Court for Harford County
Case No. C-12-CR-19-000224

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1361

September Term, 2019

CHARLES FRANKLIN STANSBURY, JR.

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 8, 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.

Convicted by a jury in the Circuit Court for Harford County of driving a vehicle while impaired by alcohol and in violation of a driver's license restriction, Charles Franklin Stansbury, Jr., appellant, presents for our review a single question: whether the court erred in "excluding [Mr. Stansbury's] testimony that his doctor was contemplating surgery to address [Mr. Stansbury's] injuries." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, Harford County Sheriff's Deputy Nathan Schnitzlein testified that at approximately 1:00 a.m. on July 29, 2018, he was on patrol on Moores Mill Road when he observed a silver Honda Civic, operated by Mr. Stansbury, "swerving in its lane." The vehicle "crossed the yellow line" and "almost [struck] the median," then "s[w]erved back into its lane of travel." Deputy Schnitzlein pulled Mr. Stansbury over "[d]ue to the traffic infraction . . . and the possibility of impairment." While speaking with Mr. Stansbury, Deputy Schnitzlein "notice[d] the odor of alcohol coming from the vehicle," and that Mr. Stansbury "had bloodshot and glassy eyes." When the deputy asked Mr. Stansbury "if he had anything to drink" that night, Mr. Stansbury replied that at approximately 7:00 p.m., "he had had two beers."

"Due to the totality of everything," Deputy Schnitzlein "asked [Mr. Stansbury] to step from the vehicle to perform . . . field sobriety tests." When the deputy asked Mr. Stansbury "if he ha[d] any medical or physical disabilities that would prohibit him from taking the test," he replied that "he had a car accident and . . . had broken both hi[p]s." During a "horizontal gaze nystagmus test," Deputy Schnitzlein observed, in both of Mr. Stansbury's eyes, "[l]ack of smooth pursuit" and "nystagmus at maximum deviation," and

also observed “nystagmus prior to forty-five” degrees. The deputy had “to explain to [Mr. Stansbury] multiple times to keep his head in a straight position.” During a “walk and turn test,” Mr. Stansbury “did not hold the instructional position,” “did not walk heel to toe,” “was not able to walk [a] straight line,” “used his arms for balance,” “did not perform [a] turn as necessary,” “stopped while walking on [a] second set” of steps, and walked more steps than instructed. During a “one leg stand” test, Mr. Stansbury raised his arms, “put[] his foot down,” and swayed.

Deputy Schnitzlein subsequently arrested Mr. Stansbury “for suspected DUI.” Mr. Stansbury repeatedly stated “that he had to go to the bathroom.” Deputy Schnitzlein stated that Mr. Stansbury could go when they arrived at “the precinct,” but Mr. Stansbury replied that if the deputy “didn’t let him go to the bathroom he was going to urinate himself in the back of [the deputy’s] car and . . . that he was leaking in his pants.” Deputy Schnitzlein and a second officer then walked Mr. Stansbury to some bushes and “let him urinate.”

The State next called Harford County Sheriff’s Deputy Lee Mink, who testified that he “came into contact with” Mr. Stansbury when the deputy “was called to the precinct to perform an intoximeter test.” Deputy Mink “noticed that [Mr. Stansbury] was very talkative,” his “tone of voice was rather loud,” and he “had red, glassy eyes and . . . the faint odor of an alcoholic beverage on his breath.” The test “ultimately provide[d]” the deputy with “a blood alcohol content” of .08. Following Deputy Mink’s testimony, the parties stipulated that “at the time of the traffic stop . . . there was an indefinite Medical Advisory Board Alcohol Restriction on [Mr. Stansbury’s] Maryland driver’s license.”

Following the close of the State’s case, Mr. Stansbury testified that he had “been taking pain medicine for both of [his] hips,” because “earlier that year,” he had been “rear ended.” Mr. Stansbury confirmed that he was “still under treatment at the time of [the] stop,” and stated that he told Deputy Schnitzlein that he “would probably have some difficulty” completing the field sobriety tests. The following colloquy then occurred:

[DEFENSE COUNSEL:] So, has the doctor told you anything else about maybe further treatment?

[MR. STANSBURY:] Yes.

[DEFENSE COUNSEL:] What has the doctor told you?

[PROSECUTOR]: Objection.

THE COURT: Come on up.

(WHEREUPON, COUNSEL . . . APPROACHED THE BENCH AND THE FOLLOWING ENSUED.)

* * *

[PROSECUTOR]: Your Honor, anything the doctor told him would be hearsay.

THE COURT: Well, in addition to it being hearsay, what would be the relevance of it as to his situation at the time of the stop?

[DEFENSE COUNSEL]: Well, I just want the jury to be aware that he is contemplating surgery. That’s all.

THE COURT: All right. Sustained.

Mr. Stansbury contends that the court erred in excluding the testimony for two reasons. First, the testimony was relevant because “the fact that [Mr. Stansbury’s] doctor considered his injuries to be severe enough to require surgery may have caused the jury to

find [Mr. Stansbury’s] version of events to be more credible,” and “may also have led jurors to conclude that [Mr. Stansbury] struggled with the ‘walk and turn’ and ‘one leg stand’ tests because of his hip injuries (rather than because of intoxication).” Second, “the statement was not inadmissible on hearsay grounds,” because the “doctor’s plan to possibly perform surgery showed the doctor’s ‘then existing state of mind,’ as well [as] ‘intent, plan, motive, [or] design,’” and Mr. Stansbury sought “only to show its effect on the listener.” The State counters that Mr. Stansbury “failed to preserve his arguments for review,” because his “new arguments on appeal” regarding the relevance of the testimony “were not presented to the . . . court,” the “substance of [the] testimony as described on appeal was not made known to the . . . court,” and “[d]efense counsel did not offer any argument as to why the doctor’s statement was not hearsay or would fall under an exception to the hearsay rules.” Alternatively, the State contends that the testimony “was not relevant,” “was hearsay,” and “did not fall under an exception to the hearsay rules.”

We agree with the State that Mr. Stansbury’s contentions are not preserved for our review. We have stated that “[o]rdinarily, a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for review the propriety of the trial court’s decision to exclude the subject evidence,” and “[w]hen evidence is inadmissible on its face and admissible only for a limited purpose or under some theory, the proponent must . . . explain to the court how the evidence is admissible and why it should be received.” *Ndunguru v. State*, 233 Md. App. 630, 637 (2017) (internal citations and quotations omitted). Here, when asked to explain to the court why the testimony was relevant, defense counsel stated only that he “want[ed] the jury to be aware that [Mr.

Stansbury's doctor was] contemplating surgery.” Defense counsel did not formally proffer the relevancy of the evidence and failed to explain why the excluded testimony was not hearsay or admissible as an exception to the hearsay rule. Hence, we cannot reach Mr. Stansbury's contention, and the court did not err in excluding the testimony.

**JUDGMENTS OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**