

Circuit Court for Wicomico County
Case No. C-22-CR-21-000392

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1911

September Term, 2022

EZEQUIEL ROSADO-ARRIAGA

v.

STATE OF MARYLAND

Arthur,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 27, 2023

* This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Wicomico County, Ezequiel Rosado-Arriaga, appellant, was convicted of sexual abuse of a minor, two counts of second-degree rape, and four counts each of third and fourth-degree sexual offense. He raises a single issue on appeal: whether the court erred in allowing the State to introduce evidence of other sexually assaultive behavior pursuant to Section 10-923 of the Courts and Judicial Proceedings Article. For the reasons that follow, we shall affirm.

Appellant's convictions were primarily based on the testimony of his minor daughter, whom he had committed various sexual offenses against when she was between 8 and 12 years old, including touching her vagina and butt with his penis. Prior to trial, the State filed a motion seeking to admit evidence that appellant had also committed sexual offenses against his stepdaughter O. when she was a minor child. Following a hearing, at which O. and her brother S. testified, the motions court determined the prior sexually assaultive behavior against O. had been proven by clear and convincing evidence, that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and therefore, that O.'s testimony was admissible. Both O. and S. testified at trial. Defense counsel did not object at any point before or during their testimony.

On appeal, appellant claims that the State failed to prove the other sexually assaultive behavior by clear and convincing evidence because O.'s testimony was too "vague and unspecified." Appellant alternatively contends that the evidence should have been excluded because its probative value was substantially outweighed by the danger of unfair prejudice. However, Maryland Rule 4-323(a) states 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.” The Supreme Court has consistently reiterated “its commitment to the requirement of a contemporaneous objection to the admissibility of evidence in order to preserve an issue for appellate review.” *Brown v. State*, 373 Md. 234, 242 (2003). “Th[is] requirement of a contemporaneous objection at trial applies even when the party contesting the evidence has made his or her objection known in a motion in limine[.]” *Wimbish v. State*, 201 Md. App. 239, 261 (2011); *see also Huggins v. State*, 479 Md. 433, 447 n.7 (2022) (explaining that after the denial of a motion in limine, “[a]n objection is required to let the court know that the party still believes the evidence should be excluded, and gives the court the opportunity to make a more informed decision with the benefit of the evidence adduced since the initial ruling”).

There are two exceptions to the contemporaneous objection rule: where counsel requests a continuing objection, *see* Md. Rule 4-323(b), or in situations where compliance with the contemporaneous objection requirement is excused because the court has “reiterated” its ruling “immediately prior” to the introduction of the evidence at issue. *See Watson v. State*, 311 Md. 370, 373 n.1 (1988) (explaining that requiring a contemporaneous objection after the court had reiterated its ruling “would be to exalt form over substance”). But these exceptions do not apply in this case. Appellant did not request a continuing objection. Moreover, the ruling on the State’s motion in limine occurred approximately eight months before trial, and the trial court did not reiterate or otherwise

address the pre-trial ruling at any point immediately prior to O.’s testimony. Accordingly, appellant’s claims are not preserved and we will not consider them on appeal.

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