Circuit Court for Caroline County
Case No. 05-K-16-011275

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2353

September Term, 2016

SEAN P. MCGILL

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2017

Following a bench trial in the Circuit Court for Caroline County, Sean P. McGill, appellant, was convicted of attempted first-degree murder, attempted second-degree murder, two counts of first-degree assault, two counts of second-degree assault, two counts of reckless endangerment, and false imprisonment. The court sentenced appellant to life in prison for attempted first-degree murder, a consecutive twenty-five years in prison for one count of first-degree assault, and a concurrent three years for false imprisonment. The remaining convictions merged for sentencing purposes. Appellant timely noted this appeal, challenging the admission of certain testimony at his trial. Because he failed to preserve these issues, however, we affirm.

Briefly recounted, on the evening of May 18, 2016, appellant was drinking at Brian Carter's residence at 9159 Andersontown Road in Denton, where he was living at the time. At approximately 10:00 P.M., Heather Hill and Jackie Roach arrived, bringing more alcohol. Appellant and Hill apparently had a tumultuous relationship, and on this particular evening, they started "carrying on back and forth" with "childish arguing" almost immediately upon Hill's arrival. Indeed, Hill testified that appellant was upset with her because she refused to hug him. Carter stated that sometime around midnight, appellant and Hill were "tussling" in the laundry room, and he and Roach intervened to separate them. At that point, Carter told appellant, Hill, and Roach to leave, and they exited the house. Carter testified that he later had to "holler" at them to get off his property because they were loudly arguing on the front porch. Carter heard them continue to argue as their voices carried down the street in the direction of 9218 Andersontown Road.

Roach and Hill attempted to get away from appellant, but he caught up to them, whereupon he wrestled Hill down to the road. Appellant and Hill fought, and at some point in this melee, appellant bit Hill's nose. Appellant let Hill up and dragged her back to Carter's house. Appellant was crying and saying that he loved Hill. Roach tried to calm the situation and asked appellant why he hurt Hill if he loved her. When appellant went back into the house, Roach and Hill took the opportunity to run down the street, again toward 9218 Andersontown Road.

Roach and Hill reached 9218 Andersontown Road, Julia Walls's home, at the same time that appellant caught up to them. Roach and Hill hoped to summon help. As Roach "beat" on the doors, Hill started screaming, "he's stabbing me." Hill sustained stab wounds to her neck, hand, and arm. In fact, appellant nearly severed Hill's jugular vein. Roach yelled and continued to hammer on doors and windows in an effort to summon help. When Roach moved to the fence of the residence, appellant pursued her and stabbed her in the hand. As he did so, appellant told Roach to beg for her life and that she would not see her grandchildren again. At that point, Walls turned her porch lights on, and appellant fled. Walls called 9-1-1. Roach went back to check on Hill, who was saying, "I'm dying, I'm dying." Hill was bleeding profusely, and she was transported by helicopter to the hospital.

Appellant, meanwhile, went back to Carter's residence. Carter testified that appellant woke him up around 4:00 A.M. on May 19th. Appellant was "wound up" and bloody, "running around the house" saying that he had screwed up. Appellant asked Carter for his keys and a gun so he could kill himself. Carter refused to give him his keys, and he did not own any guns. Appellant then left. He was later apprehended by police.

On appeal, appellant contends that the court erred in admitting certain testimony. First, he argues that the court erred when Trooper First Class Frank Fitzgerald testified that "[b]ased on his training, knowledge and experience as a law enforcement officer," Roach suffered "defensive" wounds.[1] Appellant asserts that TFC Fitzgerald's testimony constitutes impermissible lay opinion. Second, appellant contends that the court erred in permitting Senior Trooper Nathaniel Van Sant to testify that when appellant was provided a *Miranda* advice form, he did not agree to waive his rights or provide a statement.[2] Appellant argues that this testimony amounted to evidence that he had invoked his right to remain silent, and evidence of such is inadmissible.

In both instances of purportedly erroneously admitted testimony, however, appellant failed to object. Rule 4-323(a) provides in part that 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." Furthermore, pursuant to Rule 8-131(a), this Court will not rule on an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Because appellant failed to object at trial to this testimony, the issues are not preserved for our review. *See Davis v. State*, 207 Md. App. 298, 315 (2012) (holding that "unless the record reveals an objection by trial counsel to the admission of a particular piece of evidence, the issue is not preserved for appellate review").

[1] All law enforcement personnel in this case are members of the Maryland State Police, unless otherwise noted.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

Appellant recognizes that he failed to preserve either issue and urges this Court to exercise plain error review. We have the discretion to do so. *See* Rule 8-131(a). In discussing plain error review's rarity, Judge Moylan commented as follows:

> The frequency with which we are called upon to throw the life preserver of plain error to sinking (and eminently sinkable) contentions is almost a litigational scandal. It is as if appellate preservation had become an anachronistic embarrassment. We know, of course, that the possibility of plain error is out there, and on a rare and extraordinary occasion we might even be willing to go there. One must remember, however, that a consideration of plain error is like a trip to Angkor Wat or Easter Island. It is not a casual stroll down the block to the drugstore or the 7-11.

Garner v. State, 183 Md. App. 122, 152 (2008), *aff'd*, 414 Md. 372 (2010). *See also Steward v. State*, 218 Md. App. 550, 566 (2014) (remarking that an appellate court may recognize plain error when it is "'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial'" (quoting *Brown v. State*, 169 Md. App. 442, 457 (2006))). We decline to review for plain error in this case.

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