

Circuit Court for Harford County
Case No. C-12-CR-22-000244

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2149

September Term, 2023

ASHLEY PERL ZENTZ

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 24, 2025

* 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).

This case arises following the conviction of Ashley Perl Zentz, appellant, in the Circuit Court for Harford County. Zentz was tried by a jury and convicted of felony murder and the unlawful taking of a motor vehicle and was sentenced to 60 years imprisonment. Zentz did not testify at trial. This appeal followed.

QUESTIONS PRESENTED

Zentz presents one question for our review, which we have recast and rephrased into two questions as follows:¹

- I. Whether the circuit court erred in accepting Zentz’s waiver of her right to testify without specifically ruling whether the State could impeach Zentz with a prior conviction.
- II. Whether the circuit court erred in failing to correct defense counsel when counsel stated that the court would determine whether the conviction could be introduced as impeachment evidence after Zentz testified.

For the following reasons, we hold that the issue is not preserved for appellate review. We, therefore, affirm.

¹ Zentz phrased the questions as follows:

Did the court err in accepting Ms. Zentz’s waiver of her testimonial right without first ruling on whether Ms. Zentz could be impeached with a prior conviction, and without explaining that Ms. Zentz had a right to this ruling before making her election?

BACKGROUND

The following facts were presented by the State at trial. On the morning of February 18, 2022, Gerald Champ (“Champ”) was discovered deceased in his home. Champ appeared to have been deceased for some time. Champ had suffered blunt force injuries to his head, which the State argued were inflicted by a crowbar. Champ also had cuts on his arms and hands, which appeared to be defensive wounds. Champ’s wallet and his Ford Explorer vehicle were both missing. Champ allegedly never let anyone else drive his Explorer.

Champ was last seen alive on February 14, 2022. The last text message from his cell phone was sent at 6:31 a.m. on February 15, 2022. Zentz and her boyfriend, Armando Moreno, were active drug users and Zentz frequently acquired drugs from Champ. In the days prior to Champ’s death, Zentz had sent several text messages requesting his assistance in obtaining drugs. Zentz’s final text message to Champ was sent on February 13, 2022.

Moreno had been living with a woman, Tracy Austin (“Austin”), who sold drugs to Champ, and supplied drugs to Moreno. On February 15, 2022, Austin kicked Moreno out of her house because he was taking drugs to provide to Zentz without paying Austin. At approximately 1:45 a.m. on February 16, 2022, Moreno and Zentz returned to Austin’s home and left with Austin’s rental car, an Infiniti.²

² Zentz and Moreno entered Austin’s home by pushing in a kitchen window. Austin awakened to Zentz and Moreno standing at the foot of her bed; Zentz was holding a knife and Moreno demanded money. Zentz and Moreno left with Austin’s cell phone, credit cards, approximately \$1,000 in cash from a wall safe, and the Infiniti. On September 5, 2023, Zentz pled guilty to home invasion and was sentenced to 15 years, all but four

Champ's Explorer was discovered on February 26, 2022, approximately one mile from Austin's home. Surveillance cameras recovered from a community center near the location where the Explorer was discovered showed the Explorer and Austin's Infiniti enter the neighborhood together. The Explorer was parked, an individual exited the vehicle and got into the Infiniti, and the Infiniti exited the neighborhood. The Infiniti was ultimately recovered on March 2, 2022 near Zentz's mother's home, where Zentz was staying at the time.

Trial began on October 12, 2023, and continued for six days. Through opening and closing arguments and cross-examination of the State's witnesses, Zentz maintained that she was not involved in Champ's murder. Zentz claimed that she was at her mother's home at the time the murder occurred. Zentz claimed that Moreno killed Champ on his own and took Champ's Explorer, and then enlisted Zentz's assistance in getting rid of the Explorer.

On October 18, 2023, after the State rested its case and the jury was dismissed for lunch, defense counsel and the court inquired with Zentz regarding whether she wanted to testify on her own behalf. The following colloquy ensued:

[DEFENSE COUNSEL]: Now, if you take the witness stand and testify, you open yourself to cross-examination about all the case but also about certain things that go to your credibility. And one of the issues of credibility would be any criminal record you have of a certain type. Not all criminal charges but any charge since you were 18 and had counsel or waived your right to counsel that would go to your credibility. Now we call those [moral] turpitude. Most of them, but not all of them, are felonies. But things that would go to your honesty, such things as theft, false pretense, crimes like distribution of drugs, major

suspended. The State was prohibited from describing the Infiniti as stolen or mentioning any cash or items stolen from Austin during the trial for Champ's murder.

crimes, and anything that might go to show you're not a credible witness --

* * *

And that's not crimes to show that you're a bad person that can commit crimes. It's only to show that maybe you're not a witness that ought to be believed under oath because maybe you're not a credible witness. So it's not coming in for the truth or that you committed these crimes. It's simply to say that you should not (unintelligible) to be believed by the jury. It's the jury's determination if you would do that.

So, I ask the State now, does the State have any impeachables that they would be using?

* * *

[THE STATE]: The State does not reflect at this time any impeachables that I would be using --

* * *

THE COURT: What about the one she's serving now.

[THE STATE]: The home invasion, Your Honor?

THE COURT: Is that on a seal [sic]? Or was that a solid conviction?

[THE STATE]: Your Honor, that was a guilty plea. I'll defer to [defense counsel] if that's on appeal.

* * *

THE COURT: Well, let's find out. Wouldn't that be an impeachable still? A home invasion?

[DEFENSE COUNSEL]: -- I would think so.

[THE STATE]: I would agree, Your Honor.

* * *

THE COURT: Okay. Which shows that the Defendant -- it might've been too recent, pleaded guilty to one count of home

invasion; was sentenced to 15 years suspend all but four; given credit for 560 days served. And that took place on September 5th of 2023. And the appeal time passed and there is no appeal.

[THE STATE]: Thank you, Your Honor. Based upon that, that would be what the State is relying on, Your Honor.

THE COURT: All right. So that would be something that if -- an impeachable offense.

[DEFENSE COUNSEL]: That would be an impeachable.

THE COURT: Okay. Go ahead.

[DEFENSE COUNSEL]: Then we have to get into the [weighing] process, but I'll get into that later, I guess.

THE COURT: Yeah.

[DEFENSE COUNSEL]: So, there is one offense, and you know what that is, you're actually serving time on that now, that would seem to go to your credibility, whether a jury should believe you or not. That's not to say you committed this crime because you were involved in a home invasion. It's to say that because you were involved in a home invasion, you may not be a person that the they [sic] would believe your testimony. Do you understand how that works?

Now, there's more to the test. And the other part of that test is I can argue to the Judge that even though that's true, that the prejudice of that case outweighs the probative value, the jury hearing about it, and judging your credibility because that it's such a charge that they may simply think you're guilty merely because they hear the serious home invasion charge and the [J]udge would have to do the weighing process on that.

Now, if you don't testify, of course this doesn't come up because if you don't testify your credibility does not become an issue and it's not otherwise admissible. Do you understand how that works?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: All right. So I'm not going to ask you now, because I want to talk to you a little more, but do you understand what I'm telling you about your right to testify or not to testify?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: Do you understand what I told you about the Judge instructing the jury with regard to why you don't testify, if you don't testify?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: Do you understand that the jury will make the decision based only upon the evidence they heard without any regard to what you might say?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: Any questions about any of that?

[ZENTZ]: No.

[DEFENSE COUNSEL]: Your Honor, . . . I think I need more time to talk to my client about making her election. I want to make sure she understands what her election is.

THE COURT: Okay.

[DEFENSE COUNSEL]: And I think she does.

THE COURT: . . . Ms. Zentz, I want you to understand that if you do decide to testify and the State impeaches you with the prior conviction for the home invasion, I will instruct the jury that they are only to consider that conviction when they are weighing your credibility, meaning in determining whether they want to find that you are telling the truth.

But something you need to understand is that your lawyer has fought very hard to keep mention of the fact behind that particular incident from this jury because I have found, and I agree with him, that it's prejudicial.

So the back -- the reason or the actual facts of the case itself concerning that home invasion are not going to be heard

by the jury. It's the mere fact of the conviction that the jury will hear should you elect to testify. Do you understand that?

[ZENTZ]: Yes.

THE COURT: Okay. So, do you want to talk to her a little bit more, Mr. Henninger, before we -- before she makes her election?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Okay. And Ms. Zentz, if you have any questions of your attorney concerning the decision, that would be the time to ask them, all right? All right. So I'll let you do that.

The jury returned after lunch and was dismissed for the day. The next day, October 19, 2023, court resumed, and the following colloquy ensued:

[DEFENSE COUNSEL]: So if you want to testify, this is your opportunity. It's the only opportunity you're going to get.

Right now, the jury's heard all the evidence from the witness stand, seen the exhibits, heard the Judge's rulings, and we've talked about all this in great detail. And what they have is what they have. But they don't know what you have to say about this. The only way they're going to find out what you have to say would be if you take the witness stand and tell them your side of the story more or less.

If you do that, then you open yourself to cross-examination by the State's Attorney, of course, and the Judge could also have questions to you. Once you give up your right to remain silent, then you have to answer all the questions. You can't get up here, answer my questions, and then say, "I want to invoke my right to remain silent." You have to answer all the questions at that point. So that's the way it would work.

Now, the State's already said there's just one issue with regard to credibility. If you do testify, that would be something that happened in Baltimore County for which you're now serving a sentence of four years. So they can ask you about that, not to show that you commit crimes, but to show that

there's an issue whether or not you should be believed under oath because that type of crime could go to your credibility with the jury. They may say, "Well she's involved in all that. I'm not sure I believe what she has to say." But that's only if you testify. If you don't testify, that's not going to come up.

Even if you did testify, I would ask the Court not to allow that to be asked because it might be more prejudicial than probative to your testimony. I can't tell you how the Court would rule on that. The Court has kept out the incident in Baltimore County, so I just don't know. That's something I'd have to address the Court. But if you don't testify, it's simply not going to come up at all.

Do you understand how all that works?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: So have you had a chance to talk to me fully? You're ready to go forward at this time and make a decision?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: We talked yesterday some more about this at some length, correct?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: And you told me yesterday, after we discussed all this and talked about potential witnesses we also could've called which we haven't called, and I think we don't want to call, so I'm not going to address that if we're not going to call these people. But as far as your testimony, you told me you don't want to testify.

[ZENTZ]: Right.

[DEFENSE COUNSEL]: Is that your final choice?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: Do you have any further questions for me about that?

[ZENTZ]: No.

* * *

THE COURT: Okay. . . . Are you electing to testify or invoke your right not to testify?

[DEFENSE COUNSEL]: Would you like to testify today or invoke your right to remain silent --

[ZENTZ]: Understood.

[DEFENSE COUNSEL]: -- knowing that the Judge is going to instruct the jury not to even discuss or consider the fact you don't testify, because I'm going to ask her to do so? She's already indicated to me she's going to do exactly that.

So your election is not to testify. Is that correct?

[ZENTZ]: Yes.

[DEFENSE COUNSEL]: All right.

THE COURT: Okay. And you are aware that I've already put together proposed jury instructions that contains the instruction that they are not to consider the fact that you're invoking your constitutional right not to testify. But had you chosen to testify, and what [defense counsel] was talking about concerning the conviction in Baltimore County, that is something that I would very likely allow the State to use, not the underlying facts but the fact of the conviction, because it does impact your credibility, meaning whether the jury should believe your testimony. But I would also instruct the jury that they are only to consider that evidence when evaluating your credibility. Do you understand that?

[ZENTZ]: Yes.

THE COURT: Okay. And have you had enough opportunity to discuss this decision with your attorney?

[ZENTZ]: Yes.

THE COURT: And your mind is clear --

[ZENTZ]: Yes.

THE COURT: -- today? Okay. Then I'm going to make a finding that Ms. Zentz is knowingly, intelligently, and voluntarily invoking her Fifth Amendment privilege and deciding not to testify.

Following this colloquy, defense rested without presenting any witnesses. The jury found Zentz guilty of first-degree murder in the commission of a felony and the unlawful taking of a motor vehicle. Zentz was sentenced to life imprisonment, all but 60 years suspended. This timely appeal followed.

STANDARD OF REVIEW

“Review for abuse of discretion is appropriate given what the trial court must decide when asked to rule upon the admissibility of prior convictions for impeachment purposes.” *Dallas v. State*, 413 Md. 569, 582 (2010). “When a trial judge engages in the [Rule 5-609(a)] balancing test, appellate courts ‘accord[] every reasonable presumption of correctness,’ and will not ‘disturb that discretion unless it is clearly abused.’” *Burnside v. State*, 459 Md. 657, 671 (2018) (quoting *Cure v. State*, 195 Md. App. 557, 576 (2010)). “We have, however, held that ‘[t]he failure to exercise discretion when its exercise is called for is an abuse of discretion.’” *Id.* (quoting *Johnson v. State*, 325 Md. 511, 520 (1992)).

DISCUSSION

I. Zentz’s contention that the court erred in accepting the waiver of her right to testify is not preserved for appellate review.

“That a criminal defendant has a fundamental constitutional right to testify in his or her own defense is a concept ‘deeply entrenched in our modern system of jurisprudence.’” *Dallas*, 413 Md. at 582 (quoting *Jordan v. State*, 323 Md. 151, 155 (1991)). “A defendant’s right to testify ‘is a significant one and must be made with a basic appreciation of what the

choice entails.”” *Burnside*, 459 Md. at 669 (quoting *Morales v. State*, 325 Md. 330, 335 (1992)). “Given the constitutional nature of a defendant’s right to testify, the decision whether to testify must be made knowingly and voluntarily.” *Id.*

Zentz argues on appeal that the trial court erred when it accepted her waiver of her testimonial right because it did not first make a ruling regarding whether the conviction for the home invasion and theft of Austin’s Infiniti could be introduced as impeachment evidence during her testimony. Zentz contends that because the trial court did not determine whether the home invasion conviction could be introduced to impeach her credibility, and because Zentz was not informed that she had a right to such a ruling, her waiver of her testimonial right was “not knowingly made.”

The State counters that Zentz’s argument is not preserved because she never asked the trial court to make a ruling regarding whether she could be impeached with her prior conviction, nor did the court state that it would defer the ruling until it heard Zentz’s testimony. The State further contends that a ruling on the admissibility of potential impeachment evidence prior to giving testimony is not necessarily a requirement for a knowing waiver of Zentz’s testimonial right.

As we discuss below, Zentz’s claim that the court erred in accepting her waiver of her testimonial right is not preserved because Zentz never asked the court to make such a ruling. In addressing Zentz’s claim, we will first outline the legal landscape applicable to the introduction of prior conviction impeachment evidence.

A. Maryland Rule 5-609, *Dallas*, and *Burnside*

The admissibility of prior conviction impeachment evidence is directed by Maryland Rule 5-609(a), which provides:

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Evidence of a conviction should be excluded if “a period of more than 15 years has elapsed since the date of the conviction,” or if the conviction has been reversed or vacated, the conviction has been the subject of a pardon, or if an appeal from the judgment of conviction is pending or may still be filed. Md. Rule 5-609(b)-(c). When conducting the balancing test considering the probative value of admitting the evidence and any danger of unfair prejudice, the court considers “(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant’s subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant’s testimony; and (5) the centrality of the defendant’s credibility.” *Burnside*, 459 Md. at 671 (quoting *Cure*, 195 Md. App. at 576).

Typically, “to raise and preserve for review the claim of improper impeachment with a prior conviction, a defendant must testify.” *Luce v. United States*, 469 U.S. 38, 43 (1984); see also *Jordan v. State*, 323 Md. 151, 158–59 (1991) (discussing *Luce* in holding that the defendant did not preserve a challenge the trial court’s ruling that a statement made

to police was voluntary and could be used for impeachment purposes where the defendant did not testify). Both *Luce* and *Jordan*, however, considered the trial court’s issuance of an *in limine* ruling permitting the introduction of impeachment evidence should the defendant decide to testify, and the subsequent decision of the defendant not to testify. Such challenges are “not amenable to meaningful appellate review.” *Dallas*, 413 Md. at 584 (discussing *Luce* and *Jordan*). When, however, the trial court declines to make a ruling regarding whether impeachment evidence may be introduced under Maryland Rule 5-609, and instead defers ruling on the admissibility of the evidence until after the defendant has testified, a challenge to this deferral is amenable to appellate review. *Dallas*, 413 Md. at 584 (distinguishing *Dallas*’s case from *Luce* and *Jordan*).

In *Dallas*, Dallas was arrested during a traffic stop and charged with possession of marijuana, possession of cocaine, and possession of cocaine with the intent to distribute. *Id.* at 572-73. Dallas conceded that he possessed marijuana and cocaine, but his theory of defense, made clear during opening statement, was that he possessed both for his personal use and had no intent to distribute the cocaine. *Id.* at 573. Prior to presenting his case, Dallas sought a ruling from the court “that the State be prohibited from impeaching [Dallas] with his prior convictions of distribution and possession of cocaine with the intent to distribute[.]” *Id.* The court concluded that Dallas’s prior convictions were relevant to his credibility and ruled the evidence admissible for impeachment purposes. *Id.* Dallas elected not to testify. *Id.* Following a recess, the court rescinded its ruling, choosing to defer making its ruling until after Dallas testified and before cross-examination, because it would

“need to hear what [Dallas] ha[d] to say.” *Id.* at 573-74. Dallas again chose not to testify and was convicted of all charges. *Id.* at 575.

On appeal, Dallas contended that “the trial court err[ed] in refusing to rule on the admissibility of prior convictions under Md. Rule 5-609 until after [Dallas] completed his direct testimony before the jury[.]” *Id.* The Supreme Court of Maryland held that “the trial court did not abuse its discretion by deferring its ruling on the admissibility of the proposed impeachment evidence until after [Dallas] testified.” *Id.* at 588. To effectively balance the probative value of prior conviction evidence against the potential for unfair prejudice, the trial court may defer ruling on the admission of such evidence until after the court hears a defendant’s testimony. *Id.* at 585. Even so, the Court noted that “trial courts should rule on motions *in limine* as early as practicable, which often is before the defendant elects whether to testify or remain silent.” *Id.* The Court credited, however, the trial court’s explanation that “in light of the similarity between the pending charges and the prior convictions, it was necessary to await [Dallas’s] testimony before deciding whether the probative value of the proposed impeachment evidence outweighed the danger of unfair prejudice to [Dallas].” *Id.* at 587.

The Court specifically noted:

We presume that the trial court, not unreasonably, envisioned that, had [Dallas] taken the stand, he might not have confined his testimony (consistent with counsel’s opening statement) to a denial of an intent to distribute the drugs found in his possession; he might instead have testified that he had never before distributed illegal drugs. Had [Dallas’s] testimony been consistent with defense counsel’s opening statement, then the trial court might have decided that evidence of the prior convictions carried a risk of unfair prejudice to

[Dallas]. Had [Dallas] testified more expansively, then the court might have decided that the State should be permitted to impeach him with the prior convictions. Given the plausibility of either scenario, the court was not required to rule on the motion without first hearing [Dallas's] direct testimony.

Id. As such, the Court held that the trial court did not abuse its discretion in deferring its ruling on the admissibility of Dallas's prior convictions. *Id.* at 588. The Court noted, however, that if Dallas had "complain[ed] at the time that the court's delay chilled his right to make an election. . . . the trial court might well have opted to provide an *in limine* ruling before [Dallas] made his election," and the Court may have been more likely to find an abuse of discretion. *Id.*

In *Burnside v. State*, *supra*, the Supreme Court of Maryland again had the opportunity to consider the deferral of a Rule 5-609(a) admissibility ruling. Burnside was the passenger in a vehicle and was arrested during a traffic stop where drugs and cash were uncovered in the vehicle. *Burnside*, 459 Md. at 662. Burnside was ultimately convicted of possession of cocaine and possession with intent to distribute heroin. *Id.* at 667. Burnside had a prior conviction of possession with the intent to distribute a controlled dangerous substance. *Id.* at 665. Through his opening statement and several witnesses, Burnside promulgated a theory of the defense which argued that the driver of the vehicle was the individual in possession of the drugs to case reasonable doubt on Burnside's connection to the drugs. *Id.* Burnside was then advised of his right against self-incrimination, and defense counsel informed him that there was a potential that he could be impeached with his prior conviction. *Id.* The following colloquy ensued:

[BURNSIDE]: I just know that if my past is going to be used against me, then I would not like to be testifying because it would be bias, it would be biased [sic] me to the charges I'm facing right now.

[DEFENSE COUNSEL]: You are saying you would be afraid you would be prejudiced?

[BURNSIDE]: Yes[.]

* * *

[DEFENSE COUNSEL]: Okay. Okay. And I would just ask this Court, if—if the [c]ourt would conduct a balancing test. I would agree that it is [] within the purview of crimes that are involving dishonesty. . . . I would agree that it's been for the past 15 years. But part three of that test, according to *Jackson* would be whether or not it would be more prejudicial than it would be probative. We would argue that [] in this instance with a man who is on trial for possessing with intent to distribute, my fear would be that if the [c]ourt were to allow that, the State to impeach him with a prior conviction that the jury would base their decision solely on his previous conviction and not based upon the evidence presented here today.

[THE STATE]: Your honor, I do have the case that uh (inaudible) if he takes the stand and he opens the door than he would be subject to impeachment. . . .

[THE COURT]: That's—It is a balancing test but I don't think I need to make the balancing decision before he testifies. I think it's his decision whether he wants to testify or doesn't want to testify. If he takes the stand and the State attempts to bring up his prior conviction then we will have a determination at that time, but I'm not going to preliminarily make that decision.

[BURNSIDE]: I choose to exercise my Fifth Amendment right to remain silent and not testify due to his Honor's previous objections for anything I say on our [sic] behalf.

[DEFENSE COUNSEL]: So, it is your decision not to testify.

[BURNSIDE]: Yes, I don't want to testify. I won't get no [sic] justice.

Id. at 666. Burnside did not testify and was convicted of possession of cocaine and possession with intent to distribute heroin. *Id.* at 667. Burnside did not object to the court's decision to defer ruling on the admissibility of his prior conviction.

On appeal, Burnside contended that the trial court erred in failing to make a Maryland Rule 5-609(a) ruling, and the State countered that the issue was not preserved because “defense counsel never asked the trial court to make an advance ruling.” *Id.* at 677. The Supreme Court of Maryland found the issue was preserved, agreeing with Burnside that “his counsel’s and his own protests put the trial court on notice that the defense wanted a ruling prior to making an election,” and noted that “defense counsel sought an advanced ruling regarding the admissibility of the prior conviction and that the decision was decided by the trial court when it denied defense counsel’s request[.]” *Id.* The trial court denied the request when it stated: “If he takes the stand and the State attempts to bring up his prior conviction then we will have a determination at that time, but I’m not going to *preliminarily* make that decision.” *Id.* (emphasis in original).

Reaching the merits, the Court distinguished Burnside’s case from *Dallas*, noting that *Dallas* “recognized that there are circumstances where ‘fairness to the defendant augurs in favor of the trial court’s ruling on the motion before the defendant elects whether to testify or remain silent.’” *Id.* (quoting *Dallas*, 413 Md. at 586). The trial court “had adequate means of assessing how Mr. Burnside would likely testify, given the clear theory of the defense” and therefore had sufficient information to conduct the balancing test prior

to Burnside’s election whether to testify. *Id.* at 681. The Court additionally found it notable that “the trial court was aware that Mr. Burnside felt prejudiced by the delay in the ruling” whereas it had noted in *Dallas* that *Dallas* made no complaint that the court’s delay affected his decision to testify in any meaningful way. *Id.*

Finally, the Court noted that “the trial court had before it three well-established principles that suggested that such a ruling was necessary before Mr. Burnside elected to testify or not.” *Id.* First, the court was clearly aware of a defendant’s constitutional right to testify. *Id.* Second, the court clearly understood that when the defendant is on trial for a crime sufficiently similar to a previous conviction, “the danger is greater, as the jury may conclude that because he did it before he most likely has done it again,” and this had the net effect of “discourage[ing] the defendant from taking the stand.” *Id.* (quoting *Cure v. State*, 421 Md. 300, 330 (2011)). “Lastly, the trial court had guidance from [the Supreme Court] stating [in *Dallas*] that ‘[m]any are the times when a trial court can and, therefore, *should* decide a motion *in limine* involving a Rule 5-609 issue before the defendant makes the election.’” *Id.* at 682 (quoting *Dallas*, 413 Md. at 586) (emphasis in original). Thus, when the “theory of defense [is] clear, the trial judge [does] not need to wait to hear [the defendant’s] testimony before ruling on the Rule 5-609 motion.” *Id.* at 683. The Court held that “the trial court failed to exercise its discretion when it declined to conduct a Rule 5-609 balancing test prior to Mr. Burnside’s election to not testify,” which constituted an abuse of discretion. *Id.*

B. Zentz’s case

In our view, Zentz’s case is distinguishable from *Dallas* and *Burnside*. In both *Dallas* and *Burnside*, defense counsel unequivocally requested that the court undertake a Maryland Rule 5-609 balancing test to make a ruling on the admissibility of prior convictions for impeachment purposes. In *Dallas*, “defense counsel sought a ruling that the State be prohibited from impeaching Petitioner with his prior convictions” for similar crimes. 413 Md. at 573. In *Burnside*, defense counsel stated: “I would just ask this Court, if—if the [c]ourt would conduct a balancing test,” regarding the admissibility of a similar prior conviction as impeachment evidence. 459 Md. at 666. In both *Dallas* and *Burnside*, the court declined to make such a ruling until it heard the defendant’s testimony.

Conversely, Zentz did not ask the court to rule on the admissibility of her home invasion conviction prior to testifying. To be sure, Zentz’s counsel made several references to the balancing test, but indicated that counsel would only seek the ruling if Zentz decided to testify. When advising Zentz, counsel made multiple statements to Zentz and the court indicating that if Zentz was interested in testifying on her own behalf, counsel would then ask the court to engage in the balancing test.³ Notably, counsel did not expressly ask the

³ During the October 18 colloquy, defense counsel stated: “And the other part of that test is I can argue to the Judge that even though that’s true, that the prejudice of that case outweighs the probative value . . . and the judge would have to do the weighing process on that. Now if you don’t testify, of course this doesn’t come up because if you don’t testify your credibility does not become an issue and it’s not otherwise admissible.”

During the October 19 colloquy, defense counsel stated: “If you don’t testify, that’s not going to come up. Even if you did testify, I would ask the Court not to allow that to be asked because it might be more prejudicial than probative to your testimony. I can’t tell

court to rule on the admissibility of the prior conviction under Maryland Rule 5-609 at that time as it did in *Dallas* and *Burnside*. Thus, the court was not “on notice that the defense wanted a ruling prior to making an election.” *Burnside*, 459 Md. at 677. Because Zentz did not ask the court to make a determination which the court declined to do -- and the court did not *sua sponte* decide that it would defer ruling on the admissibility of the prior conviction -- there is no ruling by the trial court to be appealed. For the trial court to have erred so that we could address the alleged error under *Dallas* and *Burnside*, defense counsel needed to have asked the trial court to make a specific ruling regarding the admissibility of Zentz’s prior conviction, and the court needed to have deferred issuing such a ruling.

Pursuant to Maryland Rule 8-131(a), we “will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” To preserve an objection to a ruling by the trial court, a party must “at the time the ruling or order is made or sought, make[] known to the court the action that the party desires the court to take or the objection to the action of the court.” Md. Rule 4-323(c). Absent such objection or other indication that counsel disagrees with the action or inaction of the court, we lack the jurisdiction to engage in such review.

Further, because Zentz did not request that the court make a ruling on the admissibility of her home invasion conviction, the court did not defer such a ruling until after it heard Zentz’s testimony. Critically, Zentz did not express any objection or dissatisfaction with this action by the court. As a result, Zentz’s claim that the court erred

you how the Court would rule on that. . . . That’s something I’d have to address the (sic) Court. But if you don’t testify, it’s simply not going to come up at all.”

when it did not issue an advanced ruling on the admissibility of the conviction is not preserved.

Even if Zentz’s claim is somehow preserved, it is readily distinguishable from *Burnside*. In *Burnside*, the Court noted that “the trial court was aware that Mr. Burnside felt prejudiced by the delay in the ruling” as prior to the court’s ruling, Burnside stated: “I just know that if my past is going to be used against me, then I would not like to be testifying because [there] would be bias.” 459 Md. at 666. The Court distinguished *Burnside* from *Dallas*, noting that Dallas “did not complain at the time that the court’s delay chilled his right to make an election. Had [Dallas] done so, the trial court might well have opted to provide an *in limine* ruling before [Dallas] made his election.” 413 Md. at 588. In the present instance, Zentz has made no suggestion that the court’s failure to make a specific ruling chilled her right to make an election regarding whether to testify. Zentz presented no argument or indication that she had been planning to testify but would only do so if her prior conviction could not be used as impeachment evidence. As such, Zentz’s case is distinguishable from *Burnside*.

Finally, although the trial court did not explicitly make a ruling, it effectively told Zentz how it would rule, should she choose to testify. The trial court specifically stated: “But had you chosen to testify, and what [defense counsel] was talking about concerning the [home invasion] conviction in Baltimore County, that is something that I would very likely allow the State to use, not the underlying facts but the fact of the conviction, because it does impact your credibility.” Indeed, if the trial court determines that a prior conviction may be used as impeachment evidence, and the defendant chooses not to exercise his or

her testimonial right, the court’s decision to admit the prior conviction is not appealable. *Luce v. United States*, 469 U.S. 38, 43 (1984); *Jordan v. State*, 323 Md. 151, 158–59 (1991). Accordingly, Zentz’s claim that the trial court erred when it failed to issue a ruling on the admissibility of her prior conviction under Maryland Rule 5-609 was not preserved.⁴

C. The circuit court did not err in failing to correct defense counsel’s misstatement.

In addition, Zentz contends that she was misinformed by her counsel that she was required to testify before finding out whether she could be impeached with the prior conviction. Zentz argues that upon hearing defense counsel provide this incorrect legal advice, the trial court was obligated to correct the misstatement. The State contends that Zentz has not demonstrated that the statements made by her trial counsel necessitated intervention by the court and does not show that the trial court itself misadvised her regarding her testimonial right. Furthermore, the State contends that even if Zentz had received incorrect legal advice, she has the burden to prove that she detrimentally relied on that advice, i.e., that her decision not to testify was due to the incorrect legal advice that she received.

“[A]n assessment of a defendant’s risk of being impeached with prior convictions and the factoring of that risk into the decision whether to testify is primarily a matter of trial strategy and tactics.” *Tilghman v. State*, 117 Md. App. 542, 562 (1997). “The defendant’s right to testify is a personal right which may be waived only by the defendant,

⁴ Zentz further requests that we review her claim for relief for plain error. We exercise our discretion and decline her request to exercise plain error review.

and not by counsel.” *Savoy v. State*, 218 Md. App. 130, 148 (2014). Thus, “the trial court may assume that counsel has advised the defendant about that right and the correlative right to remain silent and, if the defendant does not testify, that the defendant has effectively waived the right to do so.” *Id.* As such, “the trial court is not required to advise represented defendants of their right to remain silent or testify.” *Morales v. State*, 325 Md. 330, 336 (1992).

“There are times, however, when a court has a duty to act, even when a defendant is represented by counsel.” *Savoy*, 218 Md. App. at 149. “[T]he question whether a trial court committed error in not assuring that a represented defendant was properly advised of his rights to testify and to remain silent is only brought to bear *if the defendant waived one of those rights as a direct result of* being misadvised by counsel.” *Id.* at 153 (quoting *Tilghman*, 117 Md. App. at 559). Therefore, “the court’s duty to intervene arises only when it is placed on clear notice that the defendant does not understand his rights.” *Id.* If defense counsel’s advice was “inherently, overtly, and facially erroneous,” then the court will have a duty to intervene. *Tilghman*, 117 Md. App. at 564; *see also Gilliam v. State*, 320 Md. 637, 656 (1990) (“Where there is no indication that the defendant has a misperception of his right to remain silent and the effect of exercising that right, and where he expressly indicates he has been fully advised of and understands the right, as well as the effect of a waiver, then an ambiguous statement made by defense counsel during an ‘on the record’ explanation does not result in reversible error if the trial court fails to intervene and clarify counsel’s ambiguous statement.”).

“Even if [a defendant] was erroneously advised of his rights,” the record must reflect that the defendant “relied on the advice in deciding to testify.” *Gregory v. State*, 189 Md. App. 20, 38 (2009). “Detrimental reliance on the erroneous advice is a necessary element in determining that the defendant did not knowingly and voluntarily waive his constitutional right to remain silent.” *Id.*

Zentz’s counsel made various statements which implied that the court was not required to conduct a balancing test and make a ruling on admissibility until after Zentz testified. Zentz argues that this was “facially incorrect legal advice” that she must “waive[] her right to remain silent, in order to learn whether she could be impeached with the prior conviction.” Counsel’s advice, however, was not so “inherently, overtly, and facially erroneous” as to necessitate the court’s intervention. *Tilghman*, 117 Md. App. at 564. While it would be incorrect to definitely assert that the court will absolutely not rule on the admissibility of impeachment evidence until after the defendant testifies, there is always the possibility, as was the case here, that defense counsel would not request that the court make a ruling under Maryland Rule 5-609 prior to the defendant electing to testify. Indeed, as noted above, may be a matter of trial strategy.

Assuming *arguendo* that defense counsel or the court provided incorrect advice, Zentz has not demonstrated detrimental reliance on that incorrect advisement. On the record before us, Zentz never makes any indication that she was planning to or even considering testifying on her own behalf prior to the colloquies in question. On the contrary, Zentz repeatedly asserted that she understood what defense counsel was explaining as it pertained to the waiver of her testimonial right. The record reflects that

Zentz spoke to her counsel about this issue at length, and that at the end of the October 19 colloquy right before she made her election, she had no further questions for her counsel and “had enough opportunity to discuss this with [her] attorney[.]” Zentz’s case is similar to *Savoy* in which

[t]here is no indication in the case sub judice that appellant relied detrimentally on his trial counsel’s advice. Appellant does not claim that he would have testified but for the erroneous advice given by his counsel. He baldly asserts, by argument only, that it is “highly likely” that his election was affected, which is mere speculation. Appellant has never claimed that he had decided to testify at his trial or that he changed his mind after his lawyer told him about the impeachment risk. After appellant was advised by his counsel, the judge adjourned court for the day and appellant had the evening to consider his decision. He met with his attorney over the evening recess and told the court the next day that he did not wish to testify. Counsel told the court: “Your Honor, I’ve spoken to my client, Mr. Savoy, and Mr. Savoy, at this time, would like to invoke his Fifth Amendment Right and not testify.”

Savoy, 218 Md. App. at 156. Zentz’s case is nearly identical. Thus, as we held in *Savoy*, “the question of whether appellant detrimentally relied on his attorney’s advice is best left for post conviction proceedings.” *Id.* at 157.

Finding no error by the trial court in its failure to correct defense counsel’s misstatement, or in its failure to conduct a Maryland Rule 5-609 balancing test and issue a ruling on the admissibility of Zentz’s prior conviction absent a request to do so by counsel, we affirm.

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