

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 24

September Term, 2023

JEFFREY LEE CUSTER, SR.

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 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 Allegany County, Jeffrey Lee Custer, Sr., appellant, was convicted of first-degree rape, kidnapping, first-degree assault, threat of arson, and other related offenses. On appeal, he contends that the court erred in “allowing the prosecution to introduce irrelevant and prejudicial evidence against [him].” For the reasons that follow, we shall affirm.

At trial, the State presented evidence that appellant and his wife were separated, but both still lived in the same mobile home park. Appellant’s wife testified that when she went on a walk one evening, appellant approached her, pushed her to the ground, choked her, and then dragged her to his trailer. Once inside the trailer, appellant tied her up, assaulted her, raped her, and threatened to kill her multiple times. Appellant eventually allowed his wife to leave his trailer and return home, in exchange for her promise that she not tell anyone what happened. However, she called the police shortly after being released. A forensic examination revealed injuries to the victim’s right jaw, neck, arms, legs, genitals, and tailbone, including multiple abrasions to her vagina. A Y-STR profile,¹ from which appellant could not be excluded, was also obtained from a swab of her vagina. When the police attempted to arrest appellant, he barricaded himself in his trailer, and the police eventually had to force their way inside to take him into custody.

On appeal, appellant claims that the trial court erred in allowing the prosecution to introduce irrelevant and prejudicial evidence on three separate occasions. Specifically, he

¹ The State’s expert in forensic DNA analysis testified that Y-STR DNA testing targets STR regions on the male Y chromosome that are passed down through the paternal lineage and, therefore, that you will most likely get the same Y-STR profile from all males in the same paternal line.

challenges the admission of (1) evidence that, in 2014, his sister had responded to a situation where he had threatened to commit suicide and the police were involved; (2) certain allegations contained in petitions for protective orders that his wife had filed against him (the petitions); and (3) evidence that he had previously been convicted of an offense for which he was on parole at the time his wife obtained the protective order.

All the challenged evidence was elicited during the cross-examinations of appellant and his sister, Kelli Wellings. Defense counsel, however, did not object at any point when the evidence was admitted at trial. Moreover, the prosecutor requested a preliminary ruling from the court on the admissibility of each piece of evidence prior to cross-examining both witnesses. Yet, when discussing these issues with the court, defense counsel did not raise any of the objections that appellant now raises on appeal.

First, prior to the cross-examination of Wellings, the prosecutor sought permission from the court to question her about the allegations contained in the petitions, and also about appellant’s prior threat to commit suicide. With respect to the petitions, defense counsel raised no objection to the proposed cross-examination and indicated that he would “defer to the Court, how to proceed.” And, as to the prior suicide attempt, counsel only expressed concern about the prosecutor referencing a “barricade situation” that had occurred during that incident, claiming that it was “unduly prejudicial.” The court agreed with defense counsel and determined that “there should [not] be any mention of the prior barricade situation.” Thereafter, the prosecutor did not question Wellings about the barricade situation during cross-examination.

Similarly, prior to cross-examining appellant, the prosecutor requested a ruling on whether she could question appellant about being on parole for a serious offense at the time his wife had obtained the protective order. In response, defense counsel only asked that the prosecutor not be allowed to mention the specific crime for which appellant had been convicted, because telling the jury about a similar offense would be “unduly prejudicial.” The trial court sustained this objection, and the State did not question appellant about what specific crime he had been convicted of during cross-examination. Additionally, the prosecutor sought permission to question appellant about the allegations contained in the petitions. Yet again, defense did not object, stating only that “it should be . . . permitted within tight perimeters, that cause the references to the prior crime to be redacted.” The prosecutor then noted that any concerns defense counsel had about redactions had been “waived” because the unredacted version of the petition had previously been admitted into evidence without objection. Defense counsel did not contest this assertion or raise any further objections to the proposed cross-examination.

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 of Maryland 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).

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. First, defense counsel did not request a continuing objection. Moreover, although the court addressed the admissibility of the challenged evidence immediately prior to the cross-examinations of Wellings and appellant, a contemporaneous objection would not have been futile or “exalt[ed] form over substance” as defense counsel had not previously given the court any indication that it was objecting to the evidence on the grounds now raised by appellant. Consequently, we hold that appellant’s claims are not preserved for appellate review.²

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

² Appellant has not requested us to engage in plain error review of his claims and, in any event, we decline to do so.