Circuit Court for Baltimore City
Case No.: 120171017

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 118

September Term, 2023

ERIC RICH

v.

STATE OF MARYLAND

Berger,
Reed,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: October 22, 2024

*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).

Appellant, Eric Rich, was indicted in the Circuit Court for Baltimore City and charged with first-degree rape, two counts of armed robbery, and several other assault and firearms-related counts. Following a jury trial, Appellant was convicted of first-degree rape, one count of robbery with a dangerous weapon, one count of second-degree assault, and one count of theft. He was subsequently sentenced to sixty (60) years' incarceration for first-degree rape, with all but forty (40) years suspended, a concurrent eight years' imprisonment for robbery with a dangerous weapon, and a concurrent three years' imprisonment for second-degree assault, to be followed by five years' supervised probation, the remaining counts merged at sentencing.[1] In this timely appeal, Appellant asks us to address the following question:

> Did the trial court err in admitting hearsay testimony from the victim's mother that exceeded the limited corroborative scope of the prompt complaint hearsay exception?

For the following reasons, we shall affirm.

BACKGROUND

The following testimony was introduced at trial. On December 27, 2018, at around 7:45 to 8:00 p.m., K.W. and her friend, Mustafa Bates, were walking through Carroll Park in Baltimore City, on their way to a Royal Farms store, when a man wearing a gray and

[1] As the trial court noted at sentencing, Count 3 of the Indictment, robbery with a dangerous weapon, was submitted to the jury on the verdict sheet as Count 4. The commitment record erroneously lists Count 4 as "robbery." We note that "Maryland Rule 4-351 is the appropriate vehicle for achieving a correction of the commitment record." *Bratt v. State*, 468 Md. 481, 506 (2020).

blue hoodie approached them and asked if they had change for a twenty.[2] After they replied in the negative, the man turned around, then turned back to them, holding a double-barrel shotgun. The man pointed the gun at K.W. and told her to turn around. Meanwhile, the man went through Bates's pockets and took his wallet and cell phone.

After robbing Bates, the man told K.W. to walk with him to a nearby wooded area. She testified that she did not want to go with him, but he was holding the gun. He told her "don't turn around, don't come up to him or he was going to shoot both of us." As they walked, the man told K.W. to disrobe, and she removed her shoes, pants, and "underclothes."[3] Once they reached the wooded area, K.W. testified, "[h]e forced me to give him oral sex," specifically, "[h]e put his penis in my mouth." She did not consent to this act.

The man then told K.W. to "turn around and bend over." K.W. did not want to consent but complied because "he had the gun on my back." He then penetrated her vagina with his penis. After he ejaculated, the man inserted his fingers and his hand in her vagina and "was trying to wipe out the evidence." The man took two rings off K.W.'s fingers and

[2] Under Md. Rule 8-125, this Court shall not identify the victim of a crime, or related individuals, except by his or her initials, if the victim was a minor child at the time of the crime, or if the alleged crime would require the defendant to register as a sex offender if convicted. Md. Rule 8-125 (a), (b)(1). The Rule further provides that this Court shall not include other information from which the victim could be identified. Md. Rule 8-125(b)(2).

[3] Although the area was searched after the incident, K.W.'s clothes were never found. In addition, K.W. testified that Bates left the scene after she was ordered to the wooded area and fled to his cousin's house. Bates passed away on March 14, 2021.

told her, she "better not tell nobody." K.W. admitted she did not get a good look at the man because it was dark.

After this, the man, who was still pointing the gun at her, told K.W. to crawl away and not to turn around. K.W. did as instructed until her knees began to hurt from crawling. She then got up and ran back to where the incident began. There, she retrieved her cell phone from the ground, testifying that she surreptitiously dropped it to hide it from the assailant. She called a friend, who called the police and called K.W.'s mother. The police responded, and K.W. was transported to Mercy Hospital, where she underwent a sexual assault forensic examination.

Approximately one week later, K.W. looked at a photo array of possible suspects prepared by the Baltimore City Police Department. K.W. was unable to identify her assailant among the photographs, but she did testify she did not have consensual sex with any of those individuals. K.W. testified, on cross-examination, that she was told, after not identifying anyone, that one of the individuals in the array had a DNA profile that matched DNA left by the assailant.

As will be discussed in more detail, K.W.'s mother, D.H., testified at trial about her conversations after K.W. was raped. In summary, D.H. testified that, on the night of the incident, K.W. told her she was raped while held at gunpoint.

The jury then heard from Nurse Kate Lovett, the sexual assault forensic nurse who examined K.W. the same night as the rape. Nurse Lovett testified that K.W. provided a narrative of events and that the purpose of receiving such a narrative from a victim was

because it "guides your exam."[4] As will be set forth in more detail, K.W. told the nurse that she was ordered to perform oral sex and was raped at gunpoint. Nurse Lovett also collected DNA swabs from K.W. for further analysis. She concluded direct examination by testifying that K.W.'s injuries were consistent with her narrative of the incident.

Christine Silbaugh, employed with the Baltimore Police Department Crime Laboratory and accepted as an expert in DNA analysis, analyzed the forensic? evidence in this case. DNA from K.W. and an unknown male was found on a swab obtained from K.W.'s external genitalia. The male DNA profile of that sample was consistent with Appellant's profile. Appellant's DNA profile was 38 nanillion times more likely than a random Caucasian American, 47 octillion times more likely than a random African American, and 8.1 nanillion times more likely than a random Hispanic American.[5]

We shall include additional detail in the following discussion.

DISCUSSION

The only issue before us concerns the testimony from D.H. corroborating that her daughter, K.W., told her she was raped and robbed at gunpoint in Carroll Park on December 27, 2018. Appellant acknowledges that such a statement is generally admissible as a

[4] Defense counsel asked for a continuing objection to the nurse's testimony about her examination, but the court overruled that objection and did not grant counsel's request. We also note that, during an earlier bench conference, Defense counsel agreed with the trial court that he did not object to the nurse "testifying that her observations are consistent with [the victim's] story."

[5] The DNA expert testified that "38 nanillion is 38 followed by 30 zeroes," 47 octillion was "47 followed by 27 zeroes," and the last number was "8.11 followed by 27 zeroes." She also testified there are "7 ½ billion" people worldwide. [Id.]

prompt complaint of sexually assaultive behavior, pursuant to Maryland Rule 5-802.1(d), but that the trial court in this case erred by admitting "unnecessary narrative detail." Appellant argues that D.H.'s testimony should have been limited to the "time, date, crime, and identity of the perpetrator."

The State first responds that Appellant's claim is not preserved for our review because (1) the grounds for the objection at trial were different than that on appeal, in that the objection was that D.H.'s testimony was "cumulative"; (2) Appellant did not ask for a continuing objection; (3) Appellant did not object to each and every question during D.H.'s testimony; and, (4) Appellant did not ask that D.H.'s testimony be stricken afterwards. Assuming *arguendo* the issue is preserved, the State does not address the merits of Appellant's argument. Instead, the State responds that any error in admitting D.H.'s testimony was harmless beyond a reasonable doubt because similar evidence, including testimony from the SAFE nurse providing the exact same details about the incident as offered by D.H., was admitted at trial without objection. .

In reply, Appellant asserts that trial counsel did object to D.H.'s testimony on the grounds that the testimony exceeded the scope of permissible corroboration. Appellant contends that the court ruled that the State could offer corroboration of the victim's account. [Id.] Thus, this issue was raised in and decided by the trial court. [Id.]

Appellant also responds that trial counsel was not required to object to each and every question or ask for a continuing objection to D.H.'s testimony because, given the timing of the objection and the ensuing testimony, further objection was unnecessary and futile. Appellant also replies that, although the closing argument focused on the identity of

the perpetrator, Defense counsel "may well have changed his strategy" based on the court's ruling admitting the detailed testimony from D.H. tending to corroborate the elements of the offenses. Appellant also argues that the nurse's account differed from that of D.H. in several respects such that any error was not harmless beyond a reasonable doubt.

We begin our preservation discussion with the testimony at issue. D.H. testified that, on the day of the incident, her daughter, K.W., told her something happened to her at Carroll Park. Asked what that was, Defense counsel objected and the following ensued:

> [DEFENSE COUNSEL]: The proper foundation predicate hasn't been laid for that question so we don't know when she -
>
> THE COURT: Is the objection hearsay?
>
> [DEFENSE COUNSEL]: Well, it wouldn't, it might be an exception to hearsay if it was contemporaneous, but the way that the question was asked.
>
> THE COURT: Yeah. Are you going under excited utterance?
>
> [PROSECUTOR]: Prompt report.
>
> THE COURT: Okay.
>
> [PROSECUTOR]: It's a, 8, 5802.1, a statement that's made with a prompt complaint of sexual assault is consistent (unintelligible) -
>
> [DEFENSE COUNSEL]: But he still needs to establish a time.
>
> THE COURT: Yeah, he needs to. Sustained. But you may proceed with your line of questioning.
>
> [PROSECUTOR]: Okay. Thank you.

Direct examination continued, and D.H. testified that K.W. called her girlfriend first after the incident, and that girlfriend then called her. D.H. immediately went to Carroll Park and spoke directly with her daughter. The jury then heard the following:

> Q. All right. Now that night, December 27, 2018, did [K.W.] tell you what happened to her at Carroll Park?
>
> A. She said she was raped.
>
> Q. Okay. Did she tell you anything more about what happened?
>
> A. She was raped and was held at gunpoint.
>
> Q. Okay. All right. Did she tell you that she knew the person who raped her?
>
> A. No. She didn't know him.
>
> Q. All right. Did she tell you anything else about the person who raped her?
>
> A. The only thing, that he held her at gunpoint and that he was aggressive with her.
>
> Q. Okay. When you came to pick her up at Carroll Park, what was she wearing?
>
> A. Just her top. No bottoms. No shoes. Socks.
>
> Q. All right. Was she wearing any underwear?
>
> A. No.
>
> Q. Okay. After this happened, was [K.W.] able to go back to work?
>
> A. Not for a moment. No.
>
> Q. Okay. Now, when you say that [K.W.] said that she was raped, did she tell you any more details, or did she just say that she was raped?
>
> [DEFENSE COUNSEL]: Ask[ed] and answered would be the objection. Your Honor.

THE COURT: Overruled.

D.H. continued:

Q. Did she explain to you exactly what happened step by step, or did she just say that she was raped?

A. She said a friend of hers had picked her up from work.

Q. Okay.

A. And they stopped at a store.

Q. Okay. And what happened, did she tell you what happened next?

A. And when they came out the store, and they was walking, this gentlemen [sic] walked up on them with a gun.

Q. Okay. Did she tell you what happened next?

At this point, Defense counsel objected, and the court heard the following objection at the bench:

[DEFENSE COUNSEL]: It's cumulative now. Now, he's going to tell the entire rape story again through this witness? That's improper.

THE COURT: So the objection is cumulative at this point?

[DEFENSE COUNSEL]: Yes.

THE COURT: [Prosecutor]?

[PROSECUTOR]: It's still a prompt report and it's a hearsay exception.

[DEFENSE COUNSEL]: What is she adding that has not already been presented by the-

[PROSECUTOR]: Corroboration.

THE COURT: He's correct, [Defense counsel]. He's corroborating her story. The State has the burden of proof in this case. The State doesn't know what the Defense is going to present as a defense in this case. The State is entitled to offer corroboration of the principle witness's testimony.

[DEFENSE COUNSEL]: I can understand that, Your Honor, but the State, *corroboration would be that she said something consistent, not to march her, step by step through the, what we've already heard.*

THE COURT: Well, to the extent that *she explained the details contemporaneous to the event, in detail, is similar to what she testified on the witness a few minutes ago. That corroborates her story*. *That's permissible corroboration.*

[DEFENSE COUNSEL]: Respectfully -

THE COURT: [Defense counsel], if you want to stipulate that the rape occurred, as the Defendant says the rape occurred, that would be one thing, but the State is entitled to offer corroborating evidence.

[DEFENSE COUNSEL]: I understand. Your Honor. I'm not arguing with the Court. But at some point, we're going to cross over into the area of—

THE COURT: Of course. At some point evidence is cumulative, but right now, this is the first piece of corroborating evidence, so objection overruled.

(Emphasis added).

D.H. resumed her testimony on direct:

Q. What, I think the last thing you said was that she was held at gunpoint. Did she tell you what happened next?

A. That he had made her and her friend walk in the park.

Q. Okay. Did she tell you what happened after that?

A. She, he made the gentleman she was with lay flat on the ground.

Q. Okay. Did she tell you what happened—

A. And told her not to move.

Q. Okay. Go ahead.

A. Then she said he was holding on to her with the gun.

Q. Okay.

A. She said her friend started to move and he said, if you move, he was going to shoot them and he was going to shoot her too.

Q. Okay.

A. So, he made something, I don't know, he took the, I believe she said he took her friend's phone from her.

After counsel objected that there was no question pending and that "[t]his is becoming a narrative now," the Court overruled the objection and the Prosecutor concluded direct examination:

Q. Okay. What happened next?

A. He took the phone.

Q. Okay.

A. And forced my daughter further into the woods in the park.

Q. Okay. Did she tell you, did [K.W.] tell you what happened in the woods in the park?

[DEFENSE COUNSEL]: Asked and answered, Your Honor.

THE COURT: No, it hasn't. Overruled.

BY [PROSECUTOR]:

Q. Did [K.W.] tell you what happened to her in the woods?

A. Yes.

Q. Okay.

A. First, before he took her off in the woods, he told her friend; she said he said I should make you watch what I'm gonna do to her, as far as taking advantage of her. So, as he proceeded into the woods with her, got her where the point he got her to, he had her perform oral sex on him. Then he did what he did to her.

Q. Then he what?

A. Then he raped her.[6]

With the exception of certain jurisdictional defects, we will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). Similarly, Rule 4-323(a) provides, in part, 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." *See Conyers v. State*, 354 Md. 132, 148-49 (1999) ("We have repeatedly asserted that the main purpose of Md. Rule 8-131(a) is to make sure that all parties in a case are accorded fair treatment, and also to encourage the orderly administration of the law").

In addition, the general rule provides that "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also Gutierrez v. State*, 423 Md. 476, 488 (2011) (reiterating that "when an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified") (citation omitted). And, "'[a] party must bring his argument to the attention of the trial court with enough particularity that the court is aware first, that there is an issue before it, and secondly, what the parameters of the issue are.'" *In re Roberto d. B.*, 399 Md.

[6] On cross-examination, D.H. further testified that K.W. told her that the man had "a rather large gun."

267, 311 (2007) (Harrell, J., dissenting) (quoting *Harmony v. State*, 88 Md. App. 306, 317 (1991)). Furthermore, "[t]he trial court needs sufficient information to allow it to make a thoughtful judgment." *Id*. at 311-12 (citation omitted).

Our Supreme Court has said that "an appellant/petitioner is entitled to present the appellate court with a more detailed version of the argument advanced" in the trial court. *State v. Greco*, 199 Md. App. 646, 658 (2011) (concluding that an issue was not waived where the State generally made the argument at trial, and where the trial court clearly decided the issue on the grounds raised on appeal) (quoting and citing *Starr v. State*, 405 Md. 293, 304 (2008)), *aff'd*, 427 Md. 477 (2012). And, "where the lower court was fully aware of the reasons advocated by counsel for and against the admissibility of the evidence offered and ruled in favor of one contender against the other, we think both propositions of law should be considered briefly." *Wilt v. Wilt*, 242 Md. 129, 134 (1966); *see also Henry v. State*, 204 Md. App. 509, 537-40 (2012) (concluding that defendant was not required to cite state law cases in order to preserve issue of burden of proof). "Thus, as long as the party, whether in a civil or criminal case, clearly makes the judge aware of the course of action he or she desires the court to take and the reasons for such course of action, the party shall have adequately preserved that issue for appellate review." *In re Ryan S.*, 369 Md. 26, 35 (2002).

In addition to clearly articulating the grounds for an objection such that the issue is raised in and decided by the trial court under Rule 8-131, and as argued by the State, Rule 4-323 adds the additional requirement concerning the timing of the objection. Generally, a party must object to each question after an adverse ruling on an objection. *See Wimbish*

v. State, 201 Md. App. 239, 261 (2011) ("[T]o preserve an objection, a party must either 'object each time a question concerning the [matter is] posed or ... request a continuing objection to the entire line of questioning'") (quoting *Brown v. State*, 90 Md. App. 220, 225 (1992)), *cert. denied*, 424 Md. 293 (2012), *abrogated on other grounds*, *State v. Davis*, 249 Md. App. 217 (2021); *Ridgeway v. State*, 140 Md. App. 49, 66 (2001) ("[a] challenge to the trial court's decision to admit testimony is not preserved unless an objection is made each time that a question eliciting that testimony is posed"), *aff'd*, 369 Md. 165 (2002); *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (objection must be to every question on point; sporadic objections do not suffice to preserve issue), *cert. denied*, 348 Md. 523 (1998).

Nevertheless, this general rule is also subject to a qualification. As the Maryland Supreme Court stated, "objections need not be reasserted if those objections 'would only spotlight for the jury the remarks of the [State].'" *State v. Robertson*, 463 Md. 342, 366-67 (2019) (quoting *Johnson v. State*, 325 Md. 511, 515 (1992)). This Court explained "[t]he State is right that an objection normally is expected each time the excluded evidence would be offered," however, "that principle is meant to guard against contextual sandbagging, to allow the trial court an opportunity to consider whether the evidence offered and testimony elicited since an earlier ruling supports its decision or compels a change." *Hall v. State*, 233 Md. App. 118, 129 (2017); *see also Standifur v. State*, 64 Md. App. 570, 580 (1985) ("To require another objection immediately would be pointless and would be tantamount to the reinstitution of the requirement that objecting counsel take formal exception to the overruling of their objections."), *aff'd*, 310 Md. 3 (1987).

Here, Defense counsel first objected to D.H.'s testimony that her daughter, K.W., told her something about the incident on the grounds of foundation. Acknowledging that there could be an exception if the testimony was considered hearsay, the State argued the testimony was admissible as a prompt complaint of sexually assaultive behavior and admissible under Maryland Rule 5-802.1(d). The court sustained the objection at this point because the State had not established when the conversation between mother and daughter occurred.

Without objection, D.H. testified that K.W. told her that she was raped and "held at gunpoint." She also testified to further detail, including that K.W. was not wearing any clothes below her waistline and that, during the rape, her assailant was "aggressive with her."

D.H. was then asked if K.W. provided "any more details," and Defense counsel objected on the grounds that the question was asked and answered. After brief testimony that added K.W. was with a friend and that they were walking across the park after D.H. finished work, Defense counsel objected when the State asked D.H. if K.W. told her "what happened next?" As set forth above, Defense counsel initially objected on the grounds that the testimony was cumulative. The State responded that D.H.'s testimony amounted to corroboration and the trial court agreed. Defense counsel replied: "I can understand that, Your Honor, but the State, corroboration would be that she said something consistent, not to march her, step by step through the, what we've already heard." The court replied that "to the extent that she explained the details contemporaneous to the event, in detail, is

similar to what she testified on the witness stand a few minutes ago. That corroborates her story. That's permissible corroboration."

The State then resumed direct examination and, immediately after the previous objection was overruled, D.H. testified to further details of the incident, including, but not limited to: (1) the assailant "made" K.W. and her friend walk and then "made" her friend lie down on the ground; (2) he told K.W. "not to move;" (3) when K.W.'s friend started to move, the assailant told D.H. and her friend that he "was going to shoot them;" and, (4) the assailant took the friend's cell phone.

Defense counsel then stated the testimony was becoming a narrative but did not ask for an objection on the grounds of asked and answered until the State again asked D.H. what K.W. told her happened in the woods. After that objection was overruled, D.H. testified to further detail, including that: (1) the assailant told K.W.'s friend that he should make him watch "what I'm gonna do to her;" (2) he made K.W. perform fellatio; and, (3) "he raped her."

We are persuaded that Appellant's argument is preserved because Defense counsel's objection raised the issue, and the trial court decided that same issue. Moreover, considering that the challenged testimony in this case occurred immediately after the bench conferences and objections, we disagree with the State's argument that Appellant failed to preserve the issue. We also disagree that a motion to strike was necessary to preserve the issue. *See Charles and Drake v. State*, 186 Md. App. 570, 593 (2009) (observing that, under revised Maryland Rule 5-103, defense counsel need only make a timely objection or motion to strike, not both, and concluding that where there was a timely objection

immediately after the witness's answer, the issue was preserved), *rev'd on other grounds*, 414 Md. 726 (2010). The issue was squarely presented, the trial court ruled on the same grounds argued on appeal, and the challenged testimony was admitted immediately thereafter. This issue is preserved.

The Merits

Turning to the merits, although "[d]eterminations regarding the admissibility of evidence are generally left to the sound discretion of the trial court[,]" *Baker v. State*, 223 Md. App. 750, 759 (2015) (quotation marks and citations omitted), "a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1, 8 (2005). *Accord Gordon v. State*, 431 Md. 527, 535-36 (2013). But, even though "determinations of hearsay admissibility are subject to [*de novo*] review on the law[,]" the Court explained in *Gordon*: "A hearsay ruling may involve several layers of analysis." *Gordon*, 431 Md. at 536. If the court is required to make any factual findings in order to resolve a hearsay determination, those findings will not be disturbed unless clearly erroneous. *Id*. at 538. The Court explained in *Gordon*:

> Under this two-dimensional approach, the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed *de novo*, but the trial court's factual findings will not be disturbed absent clear error.

Id. (cleaned up). *Accord Curtis v. State*, 259 Md. App. 283, 298 (2023).

It is clear that hearsay testimony that is a "prompt complaint of sexually assaultive behavior" is admissible if it falls under Rule 5-802.1(d), the "prompt complaint" exception, which states:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule: * * *
>
> (d) A statement that is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]

We have observed that the "'legally sanctioned function"' of the prompt complaint exception is to "'give added weight to the credibility of the victim'" by corroborating the victim's account of the alleged assault. *Choate v. State*, 214 Md. App. 118, 146 (2013) (quoting *Nelson v. State*, 137 Md. App. 402, 411 (2001)). Professor McLain explains the rationale for this hearsay exception in her treatise: "Admission of the fact that a prompt complaint was made will forestall the creation of reasonable doubt in the jurors' minds, simply because they have not heard when the first report of rape was made." 6A Lynn McLain, MARYLAND EVIDENCE STATE AND FEDERAL § 801(2):2 at 305 (3d ed. 2013) (footnote omitted).

As this Court stated in *Muhammad v. State*, 223 Md. App. 255, 268 (2015), *cert. denied*, 454 Md. 666 (2017), "[t]he purpose of the exception is fulfilled by allowing the State to introduce, in its case-in-chief, the basics of the complaint, *i.e.*, the time, date, crime,

and identity of the perpetrator." We also observed: "The narrative details of the complaint are not admissible, as they exceed the limited corroborative scope of the exception." *Id*.[7]

But more recently, we again examined the scope of the exception and its limits, and pointed out: "'[A]lthough the earlier case law admitted only the bare fact that the complaint had been made, the restraints have been loosened at least to the point of admitting as well the essential nature of the crime complained of and the identity of the assailant.'" *Vigna v. State*, 241 Md. App. 704, 731 (2019) (quoting *Cole v. State*, 83 Md. App. 279, 293 (1990)), *aff'd on other grounds*, 470 Md. 418 (2020), *cert. denied*, 141 S.Ct. 1690 (2021). Indeed, the text of Rule 5-802.1(d) does not limit narrative details of the "sexually assaultive behavior," but provides the hearsay statement is admissible if it is: "A statement that is one of prompt complaint of sexually assaultive behavior to which the declarant was subjected if the statement is consistent with the declarant's testimony[.]"

Two cases inform our discussion of the merits. In *Muhammad*, *supra*, we held that a detective's testimony exceeded the scope of the prompt complaint exception, noting that the detective's "testimony was not limited to the circumstances in which [the victim] made her complaint of sexual assault to him or that [the victim] had identified the appellant as the perpetrator and given the location, date, and time of the assault." 223 Md. App. at 271.

[7] We recognized that the substance of the out-of-court narrative may be admissible if it met the requirements of a prior consistent statement under Maryland Rule 5-802.1 (b). *Muhammad*, 223 Md. App. at 269 n. 6 ("Under the hearsay exception for a prior consistent statement, when a witness who testifies is expressly or impliedly accused of fabrication, the narrative details of the witness's prior consistent statement may be admitted for substantive use if the prior consistent statement was made before the motive to fabricate arose") (citations omitted). That exception is not at issue here.

Explaining that conclusion, we pointed to portions of the detective's testimony repeating the victim's description of matters that occurred both before and after the sexual assault. We explained:

> [Detective Bell] testified that [the victim] told him [1] that the appellant emerged from some bushes and approached her; [2] that he identified himself as a member of BGF; [3] that he put her in a "sleeper hold"; [4] that he forced her into a vacant house; that he told her to "suck his dick"; that she tried to escape by biting his penis; that he beat her around the head; that she defended herself by scratching his face; that he pushed her to the ground and beat her more; and [5] that she could not recall anything beyond that point in time until she woke up at Shock Trauma. These details corroborated much more than [the victim's] testimony that she was sexually assaulted by the appellant in a vacant row house on the afternoon of July 21, 2012. Indeed, they corroborated [the victim's] entire narrative of events, from the moment she encountered the appellant on the street to the moment she awoke at Shock Trauma. Detective Bell's testimony about his interview with [the victim] exceeded the bounds of a prompt complaint of sexual assault.

Id.

Detective Bell's testimony included hearsay statements offered to prove that: Muhammad ambushed the victim after emerging from a hiding place; he told the victim he was a member of the BGF gang; he placed the victim in a chokehold and a violent struggle occurred as the victim attempted to flee; and when the victim woke up in the hospital, she had no memory of what happened after being beaten by Muhammad. We held that the trial court erred in admitting this "narrative of the events surrounding the sexual assault." *Muhammad*, 223 Md. App. at 271.

In contrast, in *Vigna, supra*, an elementary school teacher was charged with sexually abusing several female students. In this Court, Vigna claimed that the school counselor's testimony about a child's prompt complaint exceeded the scope of the prompt complaint

hearsay exception, citing *Muhammad*. 241 Md. App. at 731. The school counselor (Ms. Sobieralski) testified as follows:

> Ms. Grey walked in and said, [A], please tell Ms. S. what you told me. And she said, you know how everybody loves--this is [A] talking. You know how everybody loves Mr. Vigna? I said, yes. And she said, well he makes me feel uncomfortable. And I said, how so? And she said, when he hugs me he touches my butt. And he makes me sit on his lap, and when I try to get up he doesn't let me.
>
> * * *
>
> I asked where and when this was happening. And she said when she goes to say goodbye at the end of the day. I asked if anybody else was involved and she said another student[']s name.

Id. at 731-32.

We held that this statement "fell well within the limitations to the prompt complaint exception. Ms. Sobieralski's testimony provided the context of the complaint, identified Mr. Vigna as the culprit, and stated the nature of the allegations." *Vigna*, 241 Md. App. at 732 (emphasis added). Because this evidence was not "a narrative account" of the sexual abuse, we held that the trial court properly admitted the evidence of the prompt complaint. *Id*.[8]

In this case, D.H. testified that, on the day of the incident, her daughter, K.W., told her she was: (1) approached by an unknown man who pulled out a gun; (2) told not to move and if either she or her companion did so, they would be shot; (3) witness to the robbery of

[8] When Vigna sought certiorari in the Court of Appeals, he did not seek review of our determination that Ms. Sobieralski's testimony fell within the limitations of the prompt complaint exception under Md. Rule 5-802.1(d). As a result, the Court of Appeals did not examine that issue when the Court affirmed our judgment affirming the conviction. *Vigna v. State*, 470 Md. 418, 438 n.8 (2020).

her companion, who apparently was told by the man that he should be made to watch the ensuing rape; (4) forced at gunpoint to walk to a nearby wooded area; (5) ordered to disrobe; (6) ordered to perform oral sex on the man; (7) raped; and then, (8) found afterward in the park, wearing only a top.

Applying the law from both *Muhammad* and *Vigna*, admission under the prompt complaint exception is limited to time, date, crime, the essential nature of the crime, and identity of the perpetrator. Although the identity of the perpetrator was not known until DNA evidence matched the Appellant's DNA profile with evidence recovered from the victim, D.H.'s testimony corroborated the date and time and provided evidence that the assailant raped K.W. and robbed her companion at gunpoint. Clearly, this testimony was within the bounds of the rule and the case law. The issue on the merits is whether D.H.'s testimony exceeded the bounds of the "essential nature of the crime," as in *Muhammad*, or whether it was within those bounds, as in *Vigna*.

The Appellant was charged, *inter alia*, with first-degree rape. Section 3-303 of the Criminal Law Article defines first-degree rape as follows:

> (a) A person may not:
>
> (1)(i) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; or
>
> (ii) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and
>
> (2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
>
> (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

> (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;
>
> (iv) commit the crime while aided and abetted by another; or
>
> (v) commit the crime in connection with a burglary in the first, second, or third degree.

Md. Code (2002, 2021 Repl. Vol.) § 3-303 of the Criminal Law Article ("Crim. Law").

Under this statute, the essential nature of the crime of first-degree rape is vaginal penetration by force, threat of force, or without consent, accompanied by one of five aggravating factors. *See State v. Baby*, 404 Md. 220, 252 n. 19, 260 (recognizing that the essential elements of rape include force, threat of force and penetration). We are persuaded that D.H.'s testimony, recounting what she was told by her daughter, fell within the limitations of the essential nature of the crime. It included evidence tending to show that K.W. was raped at gunpoint against her will. Thus, we conclude this case is closer to *Vigna* than *Muhammad*, and the trial court did not err or abuse its discretion in admitting D.H.'s testimony over objection.

Moreover, even were we to conclude the trial court erred, we hold that any error was harmless beyond a reasonable doubt. "Under a harmless error analysis, 'an appellate court does not reverse a conviction based on a trial court's error or abuse of discretion where the appellate court is satisfied beyond a reasonable doubt that the trial court's error or abuse of discretion did not influence the verdict to the defendant's detriment.'" *Gonzalez v. State*, 487 Md. 136, 184 (2024) (quoting *Ford v. State*, 462 Md. 3, 41 (2018)). *Accord Dorsey v. State*, 276 Md. 638, 659 (1976). When an appellate court considers whether an

error is harmless, it "conducts its own independent review of the record." *Gonzalez*, 487 Md. at 184 (quoting *Belton v. State*, 483 Md. 523, 541 (2023)). The burden to prove that an error did not influence the verdict falls on the State. *Id*. (citing *Perez v. State*, 420 Md. 57, 66 (2011)).

The State argues that any error in admitting detail from D.H. was harmless because similar evidence was introduced at trial, without objection. Our Supreme Court continues to recognize the admission of cumulative evidence when conducting harmless error analysis. *Gross v. State*, 481 Md. 233, 237 (2022); *see also Yates v. State*, 429 Md. 112, 120 (2012) ("This Court has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury without objection through the prior testimony of other witnesses") (quoting *Grandison v. State*, 341 Md. 175, 218-19 (1995)). As the Court explained:

> Evidence is cumulative when, beyond a reasonable doubt, we are convinced that "there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction[]." In other words, cumulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing. For example, witness testimony is cumulative when it repeats the testimony of other witnesses introduced during the State's case-in-chief. "The essence of this test is the determination whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded."

Dove v. State, 415 Md. 727, 743-44 (2010) (cleaned up).

Here, similar evidence came in, without objection, through D.H., Nurse Lovett, and the 911 call reporting the crime. D.H. testified, without objection that K.W. told her that

she was raped and "held at gunpoint." She also testified to further detail, including that K.W. was not wearing any clothes below her waistline and that, during the rape, her assailant was "aggressive with her."

In addition, Nurse Lovett testified, without objection, K.W. told her the following:

> I was at Carroll Park with a friend. We got out of the car to smoke a cigarette. A man approached us and asked for change. He then asked if he could have a cigarette. *He then pulled out a gun* and told my friend to get down on the ground. He told me to turn around, put the gun to the back of my head, and had me walk into the woods. When we got to the woods*, he made me* take off my pants and my shoes. *He made me* give him oral sex. Patient states that assailant was not wearing a condom. *Then he made me turn around and told me to bend over. He told me if I looked at him, he would shoot me.* Patient stated he put his penis inside of her vagina without a condom. Patient does not think he ejaculated. Patient states after he was finished, *he made me crawl away, and told me if I got up, he would shoot me*.

(Emphasis added).

Nurse Lovett continued, without objection, that she collected swabs from: (1) K.W.'s mouth because "she told me that she was forced to give oral sex;" (2) K.W.'s external genitalia because "she stated that she was touched and penetrated vaginally;" and, (3) vaginal and cervical swabs because "she stated that her vagina was penetrated by a penis." Her report also indicated that "threat of? force" was reported by K.W. There was also similar evidence admitted when the 911 call was played for the jury. That call, admitted without objection, included statements from an unidentified woman that K.W. was raped in Carroll Park, that her companion was shot, and that the assailant told her "not to say nothing."

Finally, in addition to all the similar testimony that went to prove the elements of the offenses, namely, that Appellant used force and the threat of force to rape and rob the

victims, there was overwhelming DNA evidence tending to show Appellant's identity as the lone culprit of these crimes. Indeed, that evidence was compelling, and we conclude that any error in admitting excess narrative detail from D.H. under the hearsay exception for a prompt complaint of sexually assaultive behavior was harmless beyond a reasonable doubt.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.