Circuit Court for Montgomery County
Case No. 136440C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1353

September Term, 2023

JOSUE A. GOMEZ-GONZALEZ

v.

STATE OF MARYLAND

Arthur,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 13, 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).

A jury in the Circuit Court for Montgomery County convicted Josue Gomez-Gonzalez, appellant, of two counts of fourth-degree sexual offense. The court sentenced Gomez to time served and ordered that he register as a sex offender.

In this appeal, Gomez presents two questions for our review. For clarity, we have rephrased those questions as:

1. Was Gomez properly convicted and sentenced on the two counts of fourth-degree sexual offense, where neither offense was charged in the indictment?

2. Did the trial court err in admitting statements the victim made to the police following the alleged crime?

We discern no error and therefore affirm.

BACKGROUND

In September 2019, a young woman, D., accused Gomez of sexually assaulting her while she was intoxicated. Gomez was later indicted on three counts of second-degree rape in violation of § 3-304 of the Criminal Law Article ("CR") of the Maryland Code. Under that statute, an individual may not knowingly engage in vaginal intercourse or a sexual act with someone who is substantially cognitively impaired or mentally incapacitated. Md. Code, Crim. Law § 3-304(a).

At trial, D. testified that she first met Gomez in 2016 and that, over the next few years, she and Gomez would occasionally get together for various activities. On September 10, 2019, Gomez and D. made plans to run errands together, and Gomez subsequently drove to D.'s house to pick her up. The two eventually decided to go to a liquor store to get some alcohol. Afterward, they went to a park, where they sat in Gomez's vehicle and

drank alcohol. D., who was not "a big drinker," began to feel "tipsy" and "tired," so she decided to "put the seat all the way back" and go to sleep. As D. was lying down, Gomez leaned over and started kissing her. D. pushed Gomez away and turned her head, at which point she realized she "was paralyzed" and "couldn't move." Gomez then put his hands inside D.'s pants and inserted his finger into D.'s vagina and anus. Although D. was "aware of what was happening," she was not able to yell or scream.

D. testified that the next thing she remembered was that Gomez had "started driving." D. stated that she was "going in and out" but that she remembered Gomez driving to meet "two friends." Gomez and D. eventually ended up at Gomez's house, where he and D. got out of the vehicle and went inside. The next thing D. knew she was in Gomez's bedroom, and Gomez was taking off her shirt and bra. When Gomez tried to remove D.'s pants, D. said, "no, no, I'm going to sleep." According to D., the last thing she remembered was Gomez trying to put his penis in her mouth.

D. testified that she woke up the next morning and found herself in Gomez's bedroom alone. Upon waking up, D. observed that she "had a lot of hickeys" and "[a] lot of bruises." D. then went to the bathroom and discovered that she was bleeding from her vagina. Shortly thereafter, D. called the police and reported the incident. D. was later taken to the hospital for treatment.

Montgomery County Police Officer Andrew Byrd testified that, on September 11, 2019, he responded to Gomez's home after receiving a report of a sexual assault. Upon arriving at the home, Officer Byrd made contact with D., and D. provided Officer Byrd with details about the incident. Officer Byrd testified that D. told him: that she had gone

out drinking with Gomez; that, at some point, she developed "gaps in her memory because of the level of intoxication;" that she was driven back to Gomez's house; that Gomez then tried to remove her pants; that she told Gomez "if he continued to do that, she would scream;" that she felt "a stabbing in her vaginal area;" and that, when she awoke the next morning, she was bleeding from the vagina.

Gomez testified in his own defense. In so doing, Gomez admitted that he and D. had arranged to meet on the day in question and that the two ended up drinking alcohol in his car. Gomez claimed that he and D. eventually fell asleep in his car and that, when he awoke, he offered to take D. home. According to Gomez, D. declined, and the two ended up having sexual intercourse in Gomez's car. Afterward, Gomez drove D. to his house, where they stayed the night. Gomez testified that he believed that D. had consciously consented to any sexual acts.

At the conclusion of the evidence, the parties discussed proposed jury instructions with the court. At the outset of that discussion, defense counsel indicated that he was considering having the court instruct the jury on "lesser-includeds." Later, when the parties were discussing the proposed instructions regarding the elements of the charged crimes of second-degree rape, the court asked defense counsel if he wanted the jury instructed on the elements of third and fourth-degree sexual offense. Defense counsel responded in the affirmative, and the State did not object. The court thereafter instructed the jury, in relevant part, as follows:

> Sexual offenses, second-degree rape, incapacity/physically helpless. The defendant is charged with the crime of second-degree rape. In order to convict the defendant of second-degree rape, the State must prove, one, that

> the defendant had vaginal intercourse or unlawful penetration with [D.]; two, that [D.] was mentally incapacitated or physically helpless at the time of the act; and three, that the defendant knew, or reasonably should have known, of the condition of [D.].
>
> Vaginal intercourse means the penetration of the penis into the vagina. The slightest penetration is sufficient, and emission of semen is not required. Unlawful penetration means the penetration, however slight, with an object or a part of a person's body into the genital opening or anus of another person's body, if it can be reasonably construed that the act is intended for sexual arousal or gratification, or for the abuse of either person.
>
> * * *
>
> Sexual offenses, third-degree sexual offense, incapacity/physically helpless. The defendant is charged with the crime of third-degree sexual offense. In order to convict the defendant of third-degree sexual offense, the State must prove that the defendant had sexual contact with [D.]; that [D.] was mentally incapacitated or physically helpless at the time of the act; and three, that the defendant knew, or reasonably should have known, of the condition of [D.].
>
> * * *
>
> Next, sexual offenses, fourth degree sexual offense. The defendant is charged with the crime of fourth-degree sexual offense. In order to convict the defendant of fourth-degree sexual offense, the State must prove, one, that the defendant had sexual contact with [D.]; and two, that the sexual contact was made against the will and without the consent of [D.].
>
> Sexual contact means the intentional touching of [D.'s] genital or anal area, or other intimate parts, for the purpose of sexual arousal or gratification, or for the abuse of either party. Evidence that [D.] physically resisted is not required.

Following the court's instructions and closing arguments, the jury retired to deliberate. The jury was given a verdict sheet that read:

> 1. As to the charge of **second-degree rape**, to wit: digital vaginal penetration of [D.], we the jury, find the defendant:

__________ Not Guilty   ________ Guilty

If you find the defendant guilty of Count One, move to question Four. If you do not find the defendant Guilty of Count One, move to question Two.

2. As to the charge of **third-degree sexual offense**, to wit: digital vaginal penetration of [D.], we the jury, find the defendant:

__________ Not Guilty   ________ Guilty

If you find the defendant guilty of Count Two, move to question Four. If you do not find the defendant Guilty of Count Two, move to question Three.

3. As to the charge of **fourth-degree sexual offense**, to wit: digital vaginal penetration of [D.], we the jury, find the defendant:

__________ Not Guilty   ________ Guilty

If you find the defendant guilty of Count Three, move to question Four. If you do not find the defendant Guilty of Count Three, move to question Four.

4. As to the charge of **second-degree rape**, to wit: vaginal intercourse with [D.], we the jury, find the defendant:

__________ Not Guilty   ________ Guilty

If you find the defendant guilty of Count Four, move to question Seven. If you do not find the defendant Guilty of Count Four, move to question Five.

5. As to the charge of **third-degree sexual offense**, to wit: vaginal intercourse with [D.], we the jury, find the defendant:

__________ Not Guilty   ________ Guilty

If you find the defendant guilty of Count Five, move to question Seven. If you do not find the defendant Guilty of Count Five, move to question Six.

6. As to the charge of **fourth-degree sexual offense**, to wit: vaginal intercourse with [D.], we the jury, find the defendant:

_________ Not Guilty   _______ Guilty

If you find the defendant guilty of Count Six, move to question Seven. If you do not find the defendant Guilty of Count Six, move to question Seven.

7. As to the charge of **second-degree rape**, to wit: digital anal penetration of [D.], we the jury, find the defendant:

_________ Not Guilty   _______ Guilty

If you find the defendant guilty of Count Seven, STOP. If you do not find the defendant Guilty of Count Seven, move to question Eight.

8. As to the charge of **third-degree sexual offense**, to wit: digital anal penetration of [D.], we the jury, find the defendant:

_________ Not Guilty   _______ Guilty

If you find the defendant guilty of Count Eight, STOP. If you do not find the defendant Guilty of Count Eight, move to question Nine.

9. As to the charge of **fourth-degree sexual offense**, to wit: digital anal penetration of [D.], we the jury, find the defendant:

_________ Not Guilty   _______ Guilty

Following deliberations, the jury returned verdicts of guilty as to Count 3 (fourth-degree sexual offense, to wit: digital vaginal penetration) and Count 6 (fourth-degree sexual offense, to wit: vaginal intercourse). The jury returned verdicts of not guilty as to the remaining counts. Gomez was thereafter sentenced to time served and ordered to register as a sex offender.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Parties' Contentions

Gomez contends that he should not have been convicted and sentenced for the crimes of fourth-degree sexual offense because he was never charged with those offenses. Recognizing that a defendant may be convicted of an uncharged offense if that offense is a "lesser-included" offense of a charged offense, Gomez contends that that principle does not apply in his case because fourth-degree sexual offense is not a lesser-included offense of the charged crime of second-degree rape. Gomez notes that second-degree rape requires "vaginal intercourse" or a "sexual act" whereas fourth-degree sexual offense requires "sexual contact." Gomez contends that, because "vaginal intercourse" and "sexual act" contemplate different conduct than "sexual contact," fourth-degree sexual offense cannot be considered a lesser-included offense of second-degree rape. Gomez therefore asserts that his convictions and sentences were illegal and that, consequently, his appellate argument is not subject to waiver.

The State argues for affirmance of Gomez's convictions and sentences. The State contends that Gomez invited the alleged error by affirmatively requesting that the uncharged crimes of fourth-degree sexual offense be submitted to the jury. The State also contends that Gomez's convictions and sentences could not be considered illegal because fourth-degree sexual offense is a lesser-included offense of second-degree rape.

Analysis

We begin our analysis with a discussion of whether the uncharged crimes of fourth-degree sexual offense were lesser-included offenses of the charged crimes of second-degree rape, as that discussion will inform our decision regarding the remaining issues. It is well-settled that a defendant may be convicted of an uncharged offense if that offense is a lesser-included offense of one that is charged. *Love v. State*, 257 Md. App. 704, 711-14 (2023). "In determining whether one offense is a lesser-included offense of another, we apply the required evidence test." *Middleton v. State*, 238 Md. App. 295, 306 (2018). "'The required evidence test focuses upon the elements of each offense; if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter.'" *State v. Frazier*, 469 Md. 627, 644 (2020) (quoting *Nicolas v. State*, 426 Md. 385, 401 (2012)). Moreover, "[w]hen applying the required evidence test to multi-purpose offenses, *i.e.*, offenses having alternative elements, a court must examine the alternative elements relevant to the case at issue." *Id.* (citations and quotations omitted).

Here, Gomez was charged with the crime of second-degree rape, which is codified in CR § 3-304. That statute states, in relevant part, that "[a] person may not engage in vaginal intercourse or a sexual act with another … if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual[.]" Md. Code, Crim. Law § 3-304(a)(2). "Vaginal intercourse" is defined as "genital copulation, whether or not semen is emitted," and it "includes penetration, however slight, of the vagina." Md. Code, Crim. Law § 3-301(g). "Sexual

act" is defined, in relevant part, as an act: "(1) in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and (2) that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party." Md. Code, Crim. Law § 3-301(d)(1)(v).

Fourth-degree sexual offense is codified in CR § 3-308. That statute states, in relevant part, that "[a] person may not engage in … sexual contact with another without the consent of the other[.]" Md. Code, Crim. Law § 3-308(b)(1). "Sexual contact" is defined as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party." Md. Code, Crim. Law § 3-301(e)(1).

As noted, Gomez argues that fourth-degree sexual offense is not a lesser-included charge of second-degree rape because the former requires proof of "sexual contact" and the latter requires proof of "vaginal intercourse" or a "sexual act." Gomez contends that, due to those disparate elements, the two offenses do not meet the required evidence test. In support, Gomez relies almost exclusively on *Travis v. State*, 218 Md. App. 410 (2014), a case in which this Court held that a defendant's acquittal on a charge of fourth-degree sexual offense was not inconsistent with his convictions of second-degree rape and second-degree sexual offense. *Id.* at 464-66.

We disagree with Gomez's arguments and hold that, under the facts of this case, the uncharged crimes of fourth-degree sexual offense were lesser-included offenses of the charged crimes of second-degree rape. When we consider those offenses as they were presented to the jury by way of the court's instructions, it is clear that the "sexual contact"

element of fourth-degree sexual offense was subsumed within the "vaginal intercourse" or "sexual act" element of second-degree rape, such that the two crimes satisfied the required elements test. For the jury to have found Gomez guilty of the charged crimes of second-degree rape, the State needed to prove either "vaginal intercourse," *i.e.*, that Gomez penetrated D.'s vagina with his penis, or "unlawful penetration," *i.e.* that Gomez digitally penetrated D.'s vagina or anus for sexual arousal or gratification, or for the abuse of either person.[1] For the jury to have found Gomez guilty of the uncharged crimes of fourth-degree sexual offense, the State needed to prove that Gomez touched D.'s genital or anal area for the purpose of sexual arousal or gratification, or for the abuse of either party. Although the definition of "vaginal intercourse" does not expressly state that the act must be committed for the purpose of sexual arousal or gratification, as does the definition of "unlawful penetration" and "sexual contact," it is axiomatic that such an act necessarily involves that intent. Thus, the only relevant difference between the two crimes is that second-degree rape required a showing of penetration. In other words, both crimes required the State to prove that Gomez made contact with D.'s vagina or anus in a "sexual" or "abusive" manner, with second-degree rape requiring the State to prove that the contact also resulted in penetration. Fourth-degree sexual offense was therefore a lesser-included

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[1] For second-degree rape, the State also needed to prove that D. was incapacitated or helpless. Gomez does not appear to argue that that element differed in any way from the consent element of fourth-degree sexual offense. Even if he did, we would disagree. *See Travis v. State*, 218 Md. App. 410, 423-24 (2014) (explaining that, with second-degree rape, "the critical denominator is the act of engaging in sexual intercourse with a woman without her consent" and that the various modalities of that crime "simply represent different ways in which that consent may be found to have been lacking").

offense of second-degree rape because all of the elements of the former offense were included in the latter offense, so that only the latter offense contained a distinct element.

Lest there was any doubt as to whether the fourth-degree sexual offenses were lesser-included offenses of the second-degree rape offenses, the verdict sheet removed that doubt. The verdict sheet separated each of the second-degree rape offenses based upon the underlying act, *i.e.*, vaginal intercourse, digital vaginal penetration, and digital anal penetration, and each of those offenses included a corresponding fourth-degree sexual offense. The verdict sheet was constructed so that, for each of the underlying acts, the jury would consider the second-degree rape offense first. The jury was then instructed that, if it found Gomez guilty of one of the second-degree rape offenses, the jury was precluded from considering the corresponding fourth-degree sexual offense. That manner of presentation made clear that each of the fourth-degree sexual offenses was a lesser-included offense of the corresponding second-degree rape offense.

We find Gomez's reliance on *Travis v. State* misplaced. That case concerned whether, following a bench trial, a trial court's verdict of not guilty on a charge of fourth-degree sexual offense was, under the facts of that case, inconsistent with the court's verdict of guilty on a charge of second-degree rape. *Travis*, 218 Md. App. at 434-66. Although some of the language in *Travis* may suggest that second-degree rape and fourth-degree sexual offense could, under certain circumstances, be considered distinct offenses, *see id.* at 464-66, none of that discussion involved whether the two offenses met the required evidence test or whether fourth-degree sexual offense could be a lesser-included offense of second-degree rape. Importantly, at no point did we state, or even suggest, that second-

degree rape and fourth-degree sexual offense were *always* distinct offenses, such that fourth-degree sexual offense could never be a lesser-included offense of second-degree rape.[2]

Having determined that the fourth-degree sexual offenses in the instant case were lesser-included offenses of the second-degree rape offenses, we are convinced that Gomez was properly convicted of the uncharged crimes of fourth-degree sexual offense. *See Love, supra*, 257 Md. App. at 711-14; *see also Johnson v. State*, 427 Md. 356, 376 n. 12 (2012) (explaining that, although a defendant generally cannot be convicted of a crime that is not contained in the indictment, "[a]n exception to this rule … exists for lesser included offenses of crimes charged in the indictment"). The record makes plain that Gomez expressly requested that the court submit the uncharged offenses to the jury as "lesser-included," and Gomez does not dispute that such a request was made. Absent an objection by the State, which did not happen here, the court was more or less required to honor Gomez's request. *See Hagans v. State*, 316 Md. 429, 453 (1989) (noting that "the lesser included offense doctrine … may now also be invoked by the defendant" and that the Supreme Court of the United States has "indicated that not allowing the defendant the right to request an instruction on a lesser included offense might violate the Due Process Clause of the Fifth Amendment of the United States Constitution"). At the very least, we cannot

[2] Gomez notes that, following his conviction and sentencing, an amended version of CR § 3-308 became effective that included an express "anti-merger" provision. 2023 Maryland Laws Ch. 730. We could find nothing in the amended statute's legislative history to indicate that the General Assembly amended the statute because fourth-degree sexual offense was always intended to be a distinct offense. Therefore, that amendment does not further Gomez's position.

say that the court erred in granting Gomez's request and instructing the jury on the uncharged offenses. *See Williams v. State*, 200 Md. App. 73, 95 (2011) ("It is only 'when counsel for both sides consider it to be in the best interests of their clients not to have an instruction' given that it is inappropriate for the circuit court to give an instruction on the lesser included offense.") (quoting *Hagans*, 316 Md. at 455).

We further note that, to the extent the court somehow erred in deciding to instruct the jury on the uncharged offenses, that error was "invited" by Gomez when he requested the instructions. Thus, any claim of error was waived. *See Molina v. State*, 244 Md. App. 67, 144 (2019) ("Under the invited error doctrine, a defendant who [] invites or creates error cannot obtain a benefit – mistrial or reversal – from that error."); *see also Smith v. State*, 218 Md. App. 689, 701-02 (2014) ("[O]ur courts have applied the invited error doctrine correctly where the alleged error arose from jury instructions the appellant requested[.]"). The record here is unequivocal that defense counsel expressly requested that the jury be instructed on the elements of fourth-degree sexual offense.

II.

Gomez's next claim of error concerns the testimony of Officer Byrd, the police officer who first responded to Gomez's home after D. reported being sexually assaulted. Specifically, Gomez takes issue with the trial court's decision to permit Officer Byrd to testify as to what D. told him after he responded to Gomez's home. The relevant portion of that testimony was as follows:

> [STATE]: And can you tell -- did you speak to [D.] about why she called 911?

[OFFICER BYRD]: I did.

[STATE]: And what did she tell you?

[OFFICER BYRD]: She indicated to me that she had gone out --

[DEFENSE]: Objection.

THE COURT: Approach?

(Bench conference follows:)

[DEFENSE]: It's hearsay.

[STATE]: It's being offered as a prompt report under 5-802.1.

THE COURT: Yes.

[STATE]: The victim testified that she woke up in the morning after being sexually assaulted. She called 911 when she woke up, after calling some family members. She stated -- the officer stated that within 15 minutes of getting that call that he spoke with [D.]. So -- and this is being offered as a prompt report of sexually assaultive activity.

THE COURT: Objection overruled.

(Bench conference concluded.)

[STATE]: Officer you can, you can answer the question. What did she tell you when you arrived on the scene?

[OFFICER BYRD]: She told me that she had gone drinking out with her, with a friend, which is the defendant. She was drinking with him in a park. She initially said that she wasn't feeling what she was drinking, so she continued to drink, at which point there were some gaps in her memory because of the level of intoxication. She was driven back to the defendant's residence. When they got back to the residence, the defendant attempted to remove her pants, at which --

[DEFENSE]: Objection.

THE COURT: Overruled.

> [OFFICER BYRD]: At which point --
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> THE COURT: You're still testifying as to what she told you, right?
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> [OFFICER BYRD]: Yes, ma'am.
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> THE COURT: Okay. Overruled.
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> [OFFICER BYRD]: She stated that if he continued to do that, she would scream. She then said that she had felt what she described as a --
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> [DEFENSE]: Objection.
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> THE COURT: Is that the same objection?
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> [DEFENSE]: Yes.
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> THE COURT: Overruled.
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> [OFFICER BYRD]: What she described as a stabbing in her vaginal area. When she woke up the next morning, she said that she was bleeding from the vagina.

Parties' Contentions

Gomez argues that the trial court erred in admitting D.'s statements to Officer Byrd under the "prompt complaint of sexually assaultive behavior" exception to the hearsay rule. Gomez contends that, when such a complaint is admitted, "the complaint must be restricted to the fact that it was made, the identity of the culprit, and the circumstances under which it was made," and it must not include "the substance of the complaint in full detail." Gomez argues that certain portions of the complaint in the instant case went beyond that limited scope. Specifically, Gomez insists that the court should not have admitted the following statements: that D. had gaps in her memory due to her intoxication; that Gomez had attempted to remove D.'s pants; that D. told Gomez she would scream; that D. had felt

a stabbing pain in her vaginal area; and that D. was bleeding from her vagina.

The State contends that Gomez's argument is unpreserved. The State argues that, to the extent that Officer Byrd's testimony went beyond the scope of the hearsay exception, Gomez was required to make that specific objection at the time the testimony was offered. The State contends that, because Gomez did not lodge any such objection, his appellate claims were not properly preserved. The State further contends that, even if some of D's statements were not fully admissible under the "prompt complaint" hearsay exception, those statements were admissible as a prior consistent statement. Finally, the State argues that any error was harmless.

Analysis

We begin with the State's preservation argument. The record shows that Gomez initially objected on the ground that the statements were hearsay, and the trial court overruled that objection on the basis that the statements were admissible as a prompt complaint of sexually assaultive behavior. Although Gomez did not provide any further argument or ask that Officer Byrd's testimony be limited in any way, Gomez did lodge two objections during Officer Byrd's subsequent testimony. In so doing, Gomez signaled to the court that some of D.'s statements could still be considered hearsay despite the court's earlier ruling. Not only did the court expressly overrule those objections, but the court clearly indicated that the objected-to statements were being admitted under the "prompt complaint" hearsay exception. Given that Gomez's appellate claims go directly to those rulings, we are persuaded that the instant issue was at least partly preserved.

That said, we do find that Gomez's appellate claims are limited to the objected-to portions of Officer Byrd's testimony and that any claims related to other portions of Officer Byrd's testimony are unpreserved. As discussed, when Gomez initially raised his general hearsay objection, the State argued that the statements were admissible under the "prompt complaint" exception, and the court agreed. At that point, if Gomez believed, as he does now, that certain portions of Officer Byrd's testimony went beyond the scope of the hearsay exception, he was required to articulate that objection and specify for the court why the testimony fell outside the "prompt complaint" hearsay exception. *See Woodlin v. State*, 254 Md. App. 691, 708-09 (2022) ("[O]nce a general objection to the admission of evidence is overruled, a party seeking to redact or otherwise limit the scope of the evidence admitted must 'raise the issue to the judge.'") (quoting *Belton v. State*, 152 Md. App. 623, 634 (2003)). Gomez did not request any such limitation, save for the two objections he lodged to specific statements recounted by Officer Byrd. If Gomez believed that other portions of Officer Byrd's testimony went beyond the scope of the hearsay exception, he should have objected to that testimony, requested a continuing objection, or moved to strike the testimony as outside the scope of the exception. Having failed to take any of those actions, Gomez cannot now complain that the court erred in admitting the unobjected-to portions of Officer Byrd's testimony. *Id.* at 708-12. Consequently, our review of Gomez's appellate claims is limited to the objected-to portions.

"Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court." *Baker v. State*, 223 Md. App. 750, 759-60 (2015) (citations omitted). Where, however, an evidentiary determination involves whether

evidence is hearsay and whether it is admissible under a hearsay exception, we review that determination *de novo*. *Gordon v. State*, 431 Md. 527, 538 (2013). If the court renders any factual findings in making a hearsay determination, those findings will not be disturbed absent clear error. *Id.*

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is inadmissible, "[e]xcept as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. One such exception can be found in Maryland Rule 5-802.1(d), which permits the admission of hearsay if the statement "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[.]"[3] The purpose of that exception "is to bolster the credibility of the victim by corroborating her account of the alleged assault." *Vigna v. State*, 241 Md. App. 704, 731 (2019). That purpose "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." *Muhammad v. State*, 223 Md. App. 255, 268 (2015). A complete narrative of the complaint, however, is not admissible, as that would "exceed the limited corroborative scope of the exception." *Id.* As such, the "prompt complaint" exception to the rule against hearsay is subject to certain limitations, namely, "the extent to which the reference may be

[3] The Rule also requires that the statement be "made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement[.]" Md. Rule 5-802.1. Gomez does not challenge that aspect of the exception.

restricted by the fact that the complaint was made, the circumstances under which it was made, and the identification of the culprit, rather than recounting the substance of the complaint in full detail." *Id.* at 269 (quoting *Nelson v. State*, 137 Md. App. 402, 411 (2001)).

Here, the statements to which Gomez objected were: 1) that Gomez had attempted to remove D.'s pants; and 2) that D. had felt a stabbing in her vaginal area. The question here, then, is whether those statements went beyond the scope of the "prompt complaint" hearsay exception.

We hold that D.'s statements were properly admitted. The statements were brief and provided minimal context regarding the nature of D.'s complaint. They were not, as Gomez claims, a "complete narrative" of D.'s account. Importantly, the statements identified Gomez as the perpetrator and set forth the basics of D.'s allegations. The statements fell well within the scope of the "prompt complaint" hearsay exception, and the trial court did not err in admitting them.

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