Circuit Court for Carroll County
Case No. C-06-CR-22-000346

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2232

September Term, 2022

SHERRI KATZ

v.

STATE OF MARYLAND

Arthur,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: November 16, 2023

*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 Sherri Katz was convicted by a jury in the Circuit Court for Carroll County of making a false statement to a law enforcement officer, and sentenced to a term of six months, with all but 90 days suspended, followed by three years' supervised probation. Appellant noted this timely appeal and presents the following questions for our review:

1. Was the evidence sufficient to sustain [a]ppellant's conviction for making a false statement to a law enforcement officer, and to the extent her trial counsel failed to preserve this issue for appellate review, was she deprived of the effective assistance of counsel?

2. Did the circuit court err in allowing irrelevant testimony about the past relationship between [a]ppellant and a witness?

3. Did the circuit court err in refusing to instruct the jury on the definition of assault when [a]ppellant's primary defense was that she was assaulted?

For the reasons that follow, we shall affirm.

FACTS AND PROCEEDINGS

Appellant and Jonathan Termonia share a six-year-old daughter. Their custody arrangement requires that they exchange their daughter at a police station in Annapolis, Maryland. However, on March 6, 2022, appellant was having car trouble, so Mr. Termonia drove to appellant's home in Manchester, Maryland to pick up his daughter. During the exchange, an altercation ensued, and the police were called. Corporal Jonathan Cranshaw of the Hampstead Police Department and Officer Phoenix Russell and Corporal Zebulun Rohrback of the Manchester Police Department arrived on the scene. Appellant and Mr. Termonia provided vastly different depictions of the encounter to the police.

Mr. Termonia stated that he arrived at appellant's home and set his phone up on his

dashboard to videotape the encounter. According to him, appellant came out of her house with a person Mr. Termonia had never met before. That individual was later identified as Carolyn Six. The two women were "making disparaging comments towards [him]," but Mr. Termonia "tried to ignore it" and remained "focused on [his] daughter." He stated that he waited for appellant and his daughter to finish saying goodbye, and then he "grabbed [his] daughter and [he] turned to walk towards the car where [appellant] and Ms. Six began kind of chasing [him] towards [his] car." After putting his daughter in her car seat, he noticed that appellant was "right up behind [him]." He stated that he closed the car door and then appellant "started saying, he is assault[ing] me, he is assaulting me." After Mr. Termonia got into his car, appellant and Ms. Six went "behind the car and they were banging on the back glass so hard that like the car was shaking." Mr. Termonia then put his car in reverse and "took [his] foot off the break [sic] lightly just to show them hey I am leaving now." When the women did not move, he put his car in park and called the police.

Appellant completed a written statement at the scene. In her statement, she asserted that Mr. Termonia "charged over" and "snatch[ed] [her] daughter and shov[ed]" appellant after he became "annoyed" that her daughter "refuse[d] to go" with him. Appellant then followed Mr. Termonia to his car to try to give him a bag containing their daughter's clothes. As appellant "reached [her] hand in the car to touch [her] daughter['s] hand and say bye," Mr. Termonia "shoved" appellant again. Appellant then stated that she was going to call the police. Appellant and Ms. Six went behind the car to get the license plate for the 911 dispatcher and Mr. Termonia "pulled up then reversed into [her and Ms. Six]."

Appellant wrote that Ms. Six "started screaming and banging on the window and screaming while [appellant] was on the phone as he . . . stopped only to yet again press the gas and just hit[] [Ms. Six]" again. Appellant also made oral statements to the police that were generally consistent with her written statement.

For her part, Ms. Six stated that she went to appellant's house because appellant was "afraid" that "the exchange would be difficult." Ms. Six recorded the interaction on her phone. At the scene, Ms. Six told the police that she was assaulted when Mr. Termonia hit her with his car.

The police gathered and watched multiple videos, including videos taken on Mr. Termonia's and Ms. Six's phones. Additionally, the police gathered video "from the bar that is located right directly next to the residence where the incident took place." After taking the statements and watching the videos, the police allowed Mr. Termonia to leave without filing any charges.

On March 31, 2022, appellant was charged with giving a false statement to a law enforcement officer. A two-day jury trial was held on February 1 and 2, 2023. At the trial, Mr. Termonia, Ms. Six,[1] the responding officers, and a Manchester Police Department supervisor testified.[2] Appellant did not testify, but appellant's written statement and the body cam footage of the officer who took appellant's verbal statement were admitted into

[1] Ms. Six was originally charged in this matter, but she entered into an agreement with the State that she would not be prosecuted if she testified at appellant's trial.

[2] The supervisor's testimony was limited to issues not relevant to this appeal.

evidence. Additionally, all the videos watched by the police as well as security footage from a nearby business were admitted as evidence. The jury found appellant guilty of making a false statement to a law enforcement officer. As noted, the court sentenced appellant to six months in jail with all but 90 days suspended, and three years' supervised probation. Additional facts will be provided as necessary.

DISCUSSION

I. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION.

Appellant argues that the evidence was insufficient to sustain her conviction for making a false statement to a law enforcement officer. Maryland law provides that:

> A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State, of a county, municipal corporation, or other political subdivision of the State, or of the Maryland-National Capital Park and Planning Police with intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint.

Md. Code (2002, 2021 Repl. Vol.), § 9-501(a) of the Criminal Law Article. In her brief, appellant asserts that "[t]o secure a conviction for making a false statement to law enforcement, the State must prove beyond a reasonable doubt that [appellant] made a statement that she knew to be false to an officer, with intent to deceive that officer and to cause an investigation or other action to be taken as a result of that statement." Appellant argues that the State did not meet its burden because (1) "[appellant's] allegations of assault had merit[,]" (2) "[t]here [was] insufficient evidence that [appellant] intended to deceive law enforcement[,]" (3) "[t]here [was] insufficient evidence that [appellant's] statement to

police was akin to a false alarm wasting police resources[,]" and (4) "[appellant's] statement did not initiate the investigation[.]" The State responds that appellant "waived three of her sufficiency arguments" by failing to raise them in her motion for judgment of acquittal.

On the issue of preservation, this Court stated in *Winston v. State*, 235 Md. App. 540, 574–75 (2018):

> Md. Rule 4-324(a) requires the defendant "to state with particularity all the reasons why the motion [for judgment of acquittal] should be granted[.]" The issue of sufficiency of the evidence is not preserved when the defendant's motion for judgment of acquittal is on a ground different from the one set forth on appeal. *Mulley v. State*, 228 Md. App. 364, 388, 137 A.3d 1091 (2016); *accord Hobby v. State*, 436 Md. 526, 540, 83 A.3d 794 (2014). Consequently, a defendant may not tell the trial court that the evidence was insufficient for one reason, but then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal. *Id.* at 388–89, 137 A.3d 1091; *accord Hobby v. State*, 436 Md. at 540, 83 A.3d 794.

(Alterations in original).

At the close of the State's case, defense counsel moved for a judgment of acquittal on two discrete bases: *first*, although appellant was charged with giving a false statement to Corporal Rohrback, there was conflicting evidence whether Corporal Rohrback or Officer Russell received her written statement; and *second*, that appellant's statement was not false because the evidence showed that Mr. Termonia "should have been charged with assault" with his vehicle. The court denied the motion for acquittal and, after a very brief defense presentation and no rebuttal evidence from the State, defense counsel renewed the motion for judgment of acquittal by adopting the two arguments previously made at the

close of the State's case. The court again denied the motion for judgment of acquittal.

Because appellant's counsel confined his judgment of acquittal motion to the two grounds specifically articulated to the trial court, appellant's third and fourth appellate arguments on this issue are unpreserved.[3] Of the two preserved arguments emanating from the motion for judgment of acquittal, appellant only argues on appeal that "the State failed to prove that [appellant] made a false statement to police" because "the statement she made

[3] Appellant concedes that "trial counsel did not raise that the alleged false statement came after the initiation of the investigation" in his motion for judgment of acquittal, but argues that "appellant was deprived of the effective assistance of counsel." "[W]e prefer post-conviction proceedings to address denial of effective assistance of counsel claims," and review on appeal is only appropriate in "exceptional cases where the trial record reveals counsel's ineffectiveness to be ' . . . blatant and egregious.'" *Mosely v. State*, 378 Md. 548, 562–63 (quoting *Johnson v. State*, 292 Md. 405, 435 n.15 (1982)). Furthermore, we will not review ineffective assistance of counsel claims "[w]here, as here, the record sheds no light on why counsel acted as he did [and] direct review by this Court would primarily involve the perilous process of second-guessing, perhaps resulting in an unnecessary reversal in a case where sound but unapparent reasons existed for counsel's actions." *Tetso v. State*, 205 Md. App. 334, 379 (2012) (quoting *Addison v. State*, 191 Md. App. 159, 175 (2010)). Applying this standard, we shall not review appellant's claim that she was deprived of effective assistance of counsel. We acknowledge that appellant is now ineligible to file a post-conviction petition because she has served her full sentence and is not on probation for this charge. *See* Md. Code (2001, 2018 Repl. Vol.), § 7-101 of the Criminal Procedure Article (stating that post-conviction relief is only available to a person "confined under sentence of imprisonment" or who is "on parole or probation"). We also note that nothing prevented appellant from filing a post-conviction petition prior to her release from custody. Moreover, nothing would prevent appellant from raising this claim in a coram nobis proceeding to the extent that she is suffering from significant collateral consequences as a result of the conviction. *See Smith v. State*, 219 Md. App. 289, 292 (2014) ("To state a cause of action for coram nobis relief, a petitioner must allege . . . that he is 'suffering or facing significant collateral consequences from the conviction.'" (quoting *Skok v. State*, 361 Md. 52, 79 (2000))). In sum, the record in this case—which reflects the admission of substantial evidence arguably collateral to the sole charge—is insufficient to determine why trial counsel decided not to argue the unpreserved arguments.

alleging that [Mr.] Termonia assaulted her was not false." Appellant essentially argues that Mr. Termonia committed an assault when he reversed his car into her and Ms. Six.[4] The State argues that "the video evidence was inconclusive as to whether the car made any contact with [Ms.] Six or [appellant,]" but either way "the videos conclusively demonstrated" that appellant's statements were false.

The Supreme Court of Maryland recently affirmed the long-standing standard of review for sufficiency of the evidence claims:

> We normally review sufficiency of evidence rulings by whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." This Court does not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." "[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." The deferential standard recognizes the trier of fact's better position to assess the evidence and credibility of the witnesses.

State v. McGagh, 472 Md. 168, 194 (2021) (citations omitted).

This case presents the quintessential "she said, he said" scenario. In her written statement, appellant wrote that Mr. Termonia "pulled up then reversed into us" and then he "press[ed] the gas" and hit Ms. Six with the car again. Mr. Termonia testified that after appellant and Ms. Six stood behind his car and would not let him leave, he put his car in reverse and "took [his] foot off the break [sic] lightly just to show them hey I am leaving

[4] Although the judgment of acquittal argument that there was conflicting testimony about who received her statement was preserved for appellate review, appellant makes no such argument in her appellate brief.

now." He then put his car back in park when the women did not move. He testified that "[n]obody g[ot] pushed back" by his car and "[t]he tire rotation was one eighth of a turn."

Ms. Six's testimony was anything but clear. Ms. Six testified at the trial that her statement to the police on March 6, 2023, "wasn't entirely how I recall it now" and that she was "unsure of the events of that day" because her memory was a "little distorted." She stated that she was "entirely unsure" if she was hit by Mr. Termonia's car but "something shoved [her] hard enough to sprain [her] neck and to sprain one of [her] knees." She also stated that "it is very possible that I could have fallen down, trying to walk up that hill on the pavement." In short, the trier of fact could find Ms. Six's testimony supportive of either appellant's or Mr. Termonia's version of the incident.

In light of this conflicting evidence, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence. . . .'" *Neal v. State*, 191 Md. App. 297, 314 (2010) (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)); *see also Pinkney v. State*, 151 Md. App. 311, 331 (2003) ("[O]n appellate review, we are not asked to re-weigh the evidence or substitute our judgment for that of the jury[.]"). We note that, in addition to the conflicting testimony, the jury saw numerous videos that appear to contradict appellant's written statement because they show only slight movement in Mr. Termonia's vehicle and do not support appellant's claim that the car "pulled up and then reversed into" the women and then struck

Ms. Six a second time.[5] "[I]t is well established in Maryland that the testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153 (2010) (citing *Walters v. State*, 242 Md. 235, 237–38 (1966)); *see also Correll v. State*, 215 Md. App. 483, 502 (2013) (stating it is "not a proper sufficiency argument to maintain that the jurors should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses"). Here, Mr. Termonia's testimony, combined with the video evidence, was sufficient for the jury to conclude that appellant made a false statement to the police.[6]

II. ANY ERROR RELATED TO MS. SIX'S TESTIMONY CONCERNING HER RELATIONSHIP WITH APPELLANT WAS EITHER HARMLESS OR UNPRESERVED.

Appellant argues that "[t]he circuit court erred in allowing irrelevant testimony about the past relationship between [appellant] and [Ms.] Six." Appellant specifically alleges that the court erred by overruling her objection in the following colloquy that occurred during Ms. Six's redirect examination:

[PROSECUTOR]: All right. And are you friends with [appellant] today?

[5] Appellant also claimed that Mr. Termonia "shoved" her during the altercation, but Mr. Termonia and the video evidence suggested otherwise. Resolution of this issue was likewise within the province of the trier of fact.

[6] Appellant contends that her second sufficiency argument on appeal (that there was insufficient evidence that she intended to deceive officers) was preserved because that issue was "interrelated" with the argument that she did not give a false statement because Mr. Termonia committed an assault. *Unger v. State*, 427 Md. 383, 407 (2012). We agree that these two arguments are interrelated, but conclude that the evidence was likewise sufficient to support the intent to deceive element of the offense.

[MS. SIX]: No.

[PROSECUTOR]: Why is that?

[MS. SIX]: After the incident, she became --

[DEFENSE COUNSEL]: Objection, relevance to this -- what happened after the incident.

THE COURT: Counsel, approach.

(Whereupon, the bench conference follows.)

THE COURT: All right, objection on relevance grounds. What -- what are you trying to elicit?

[PROSECUTOR]: That she has found that Ms. Katz is not credible and that she has taken advantage of her and that that was what was going on this evening.

THE COURT: All right.

[DEFENSE COUNSEL]: And that would be why I would be objecting.

THE COURT: Well, I understand you may not like it, the question is whether it is something that is relevant and would be permissible. I am going to allow it. I am going to overrule the objection. She can answer the question as to why.

(Whereupon the bench conference ends.)

THE COURT: All right, for the reasons stated at the bench, the objection is overruled. She can answer.

[PROSECUTOR]: Okay, Ms. Six, if you could just tell us briefly why you are no longer friends with [appellant]?

[MS. SIX]: So shortly after the incident, she completely changed. She was angry, aggressive, mean, nasty towards me. Sent messages like you know, PTSD only lasts three weeks, how are you still messed up? That is completely inaccurate but. It just -- it got to the point where there was a text

group where there were 18 angry texts in a row that a third party saw before they had to intervene and be like can I be removed from this. It just became too much. Voicemails and messages and it was just all angry and nonsensical and I just couldn't take it anymore.

[PROSECUTOR]: Okay, so back on March 6th, 2022, how would you describe that friendship that night?

[MS. SIX]: Honestly at this point, I think I might have been manipulated.

"The admissibility of evidence is generally vested in the sound discretion of the trial court." *Bryant v. State*, 163 Md. App. 451, 490 (2005). "As a general rule, in order for evidence to be admissible, it must be relevant[.]" *Id.* (citing *Snyder v. State*, 361 Md. 580, 591 (2000)). Maryland Rule 5-401 states that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 5-402 makes clear that the "trial court does not have discretion to admit irrelevant evidence." *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 620 (2011). We apply a *de novo* standard of review to relevancy determinations. *Id.*

We agree with appellant's assertion that "[t]he question of whether [appellant] and [Ms.] Six remained friends at the time of trial was not relevant because it did not render more probable that [appellant] made a false statement to police on March 6." But we conclude that the error in admitting this testimony was harmless. This Court has summarized the harmless error standard as follows:

> When an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to

> declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Butler v. State, 231 Md. App. 533, 555 (2017) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). "To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Id.* at 556 (quoting *Taylor v. State*, 407 Md. 137, 165 (2009)). Here, the evidence erroneously admitted was that, after the March 6 altercation, appellant was "angry" and "mean" towards Ms. Six and left multiple and excessive "[v]oicemails and messages." There is no reasonable possibility that these unimportant details concerning the demise of their relationship *after* the incident contributed to the jury finding appellant guilty of making a false statement to a law enforcement officer. Moreover, this testimony was completely unrelated to appellant's written statement that served as the primary basis for the criminal charge.

Appellant's principal concern with the above testimony is that Ms. Six stated that she "might have been manipulated" by appellant. Appellant argues that this testimony cannot be harmless because it supported the State's theory that appellant sought to manipulate police and the State relied upon this testimony in its closing argument. First, the erroneously admitted testimony did not explicitly address or challenge appellant's credibility. Moreover, appellant disregards the fact that the testimony about "manipulation" was in response to a different question that was not objected to: "Okay, so

back on March 6th, 2022, how would you describe that friendship that night?" The question concerning Ms. Six's friendship with appellant on March 6, 2022 is substantively different from the objected-to question about their friendship as of the date of trial and, as such, required a separate objection for preservation purposes. Because defense counsel neither objected to the question concerning their relationship on March 6, 2022, nor requested that the answer be stricken, appellant's claim of error on this issue is unpreserved. *See* Md. Rule 5-103(a) (stating that "[e]rror may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and (1) . . . a timely objection or motion to strike appears of record").

III. THE COURT DID NOT ERR IN REFUSING TO INSTRUCT THE JURY ON THE DEFINITION OF ASSAULT.

Finally, appellant argues that "[t]he circuit court erred in refusing to instruct the jury on the definition of assault[.]" The State responds that "the court properly rejected [appellant's] requested instruction" because "the definition of assault was not applicable to the facts of this case."

Appellant requested the court to give a jury instruction on the definition of assault. The court denied this request because "it is not one of the elements charged, nor is it a specific defense that was raised." Additionally, the court found that the jury instruction "would only serve to unduly confuse the jury" and "would effectively suggest to the [j]ury that Mr. Termonia is on trial." Nevertheless, the court allowed appellant to "argue what assault is to the [j]ury" in appellant's closing argument.

"A circuit court has broad discretion when determining whether a jury instruction is warranted by the facts of the case." *Howling v. State*, 478 Md. 472, 492 (2022) (citing *Carter v. State*, 366 Md. 574, 584 (2001)). "We accordingly review the decision not to provide a jury instruction for abuse of discretion." *Id.* (citing *Cost v. State*, 417 Md. 360, 368 (2010)).

> We assess whether a circuit court abused its discretion in denying a request for a particular jury instruction by determining "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered [elsewhere or] in the instructions actually given."

Id. at 492–93 (alteration in original) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)).

The court did not abuse its discretion in declining appellant's request for an instruction on assault. The issue at appellant's trial was whether she made a false statement to police by asserting Mr. Termonia shoved her and then struck her and Ms. Six with his car. The question was not whether appellant's allegations, if true, would meet the legal definition of assault. *See General v. State*, 367 Md. 475, 485 (2002) ("Jury instructions direct the jury's attention to the legal principles that apply to the facts of the case."); *see generally Keller v. Serio*, 437 Md. 277, 291 (2014) (concluding that "once we have determined that the subject matter of the instruction was not 'applicable under the facts of the case'" we need not consider whether it was a correct statement of law (quoting *Stabb*, 423 Md. at 465)).

Moreover, "[t]he main purpose of jury instructions 'is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the

jury arrive at a correct verdict.'" *Dickey v. State*, 404 Md. 187, 197 (2008) (quoting *General*, 367 Md. at 485). To accomplish this purpose, jury instructions should not be "ambiguous, misleading or confusing[.]" *Smith v. State*, 403 Md. 659, 663 (2008) (quoting *Battle v. State*, 287 Md. 675, 685 (1980)). The court expressed concern that appellant's requested jury instruction on the elements of assault would "unduly confuse the jury" because "it would effectively suggest to the [j]ury that Mr. Termonia is on trial" for assault. We discern no abuse of discretion in the court's assessment.

Additionally, "'instructions are reviewed in their entirety' and '[r]eversal is not required where the jury instructions, taken as a whole, sufficiently protect the defendant's rights and adequately covered the theory of the defense.'" *Carroll v. State*, 428 Md. 679, 689 (2012) (alteration in original) (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)). Appellant does not challenge the court's jury instruction concerning the elements of making a false statement to a law enforcement officer. The court's instruction adequately covered appellant's theory of the case, *i.e.*, that her statements to the police were not false.

We therefore affirm appellant's conviction.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.