UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1969

September Term, 2014

RONALD D. BOYD

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: December 7, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial, Ronald Boyd ("Boyd"), appellant, was convicted of second-degree assault in the Circuit Court for Prince George's County.[1] The court sentenced him to ten years' imprisonment. Boyd presents two questions for our review on appeal, which we have rephrased slightly as follows:[2]

1. Whether the trial court erred in admitting the victim's medical records.

2. Whether the trial court abused its discretion in declining to propound requested *voir dire* questions.

For the reasons stated herein, we affirm.

BACKGROUND

The evidence presented at trial demonstrated that on the night of April 26, 2010, Terasa Evans, Boyd's ex-wife, and her friend, Qiana Parker, went to a sports bar to meet friends.[3] Boyd arrived at the same sports bar shortly thereafter. Boyd became upset when he observed Ms. Evans greet a male friend with a hug. When Ms. Evans and Ms. Parker

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[1] The appellant was previously convicted of first and second-degree assault of Ms. Evans in a bench trial. The appellant appealed and this Court reversed and remanded for a new trial in an unreported opinion. *See Ronald Dion Boyd v. State*, No. 1949, Sept. Term 2011 (filed July 10, 2013).

[2] The appellant phrased the questions as:

1. Did the trial court err in admitting the medical records?

2. Did the trial court err in refusing to propound requested *voir dire* questions?

[3] Ms. Evans did not testify at trial because she was deceased. Her death was unrelated to the case against the appellant. Her friend, Ms. Parker, who witnessed the incident, did testify at trial.

left the bar, Boyd followed them into the parking lot. Ms. Evans proceeded to Ms. Parker's car because it was closer than her own. As Ms. Evans reached to open the car door, Boyd grabbed her by the neck with two hands and dragged her across the parking lot. Boyd further punched her twice in the face. As a result of the attack, Ms. Evans suffered a fractured left cheekbone which required surgery to repair.

Additional facts will be introduced in the discussion as they become relevant.

DISCUSSION

I. Boyd Did Not Preserve his Objection to the Receipt into Evidence of the Victim's Medical Records.

Boyd contends that the trial court erred in admitting Ms. Evans's medical records on several grounds. Boys asserts (1) that records contained inadmissible hearsay; (2) the records contained evidence of prior bad acts; and (3) that the admission of the records violated his right of confrontation. The State counters that Boyd's challenge to the medical records is not preserved for appeal, and even if considered, there is no merit to Boyd's claim that the court erred in admitting the records absent the additional redactions. We agree with the State.

Maryland Rule 8-131(a) provides that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised or decided by the trial court[.]" Boyd, while acknowledging that defense counsel filed a motion *in limine* on "different grounds," argues that these issues raised on appeal are preserved on the basis of the general objection counsel raised when the records were admitted at trial.

We review the record before us to determine whether the challenges to the portions of the medical records at issue were raised in or decided by the trial court.

Prior to trial, defense counsel moved *in limine* to exclude hearsay statements contained in Ms. Evans's medical records. At a motions hearing, defense counsel and the court discussed the request:

> [DEFENSE COUNSEL]: [A]s far as the motion I filed regarding the medical records, I think **my motion sets out pretty well the basis of why I think certain portions of the medical records should be redacted, specifically statements attributing the cause of her injuries to [appellant], her ex-husband.** I do have some things I want to add to the State's response.
>
> THE COURT: I just want to ask, **just so I'm crystal clear, what you're asking is what is redacted from those medical records is the criminal agency?**
>
> [DEFENSE COUNSEL]: **Exactly.**
>
> THE COURT: **Who did it?**
>
> [DEFENSE COUNSEL]: **Exactly.**

(Emphasis added.)

The court granted Boyd's motion in part and ordered the parties to redact the portions of the medical records "where [Ms. Evans] indicates who committed the offense." At the close of evidence at trial, the parties informed the court that they had reached agreement on redaction of the records:

> THE COURT: All right. Can you and the defense agree on what to redact do you think?
>
> PROSECUTOR: We think we already have, Your Honor.

> DEFENSE COUNSEL: Yes. The State sent me their redactions last night. I sent back some additional ones. I think they –
>
> * * *
>
> THE COURT: Okay. All right. And what do the records – **so do you object to the admission of those records with the redactions?** And you have certificates from – **as business records**?
>
> PROSECUTOR: Yes, everything's been provided to [defense counsel].
>
> DEFENSE COUNSEL: **We do.**
>
> THE COURT: I'm going to admit them over objection subject to redactions. The certificates, they certainly are business records and I'm going to admit them subject to redaction of the hearsay without the custodian.

(Emphasis added.)

The medical records were redacted to remove "statements attributing the cause of her injuries to [appellant]," as defense counsel requested. Shortly thereafter, Boyd objected, *pro se*, to the medical records on the basis of "*Crawford v. Washington*,"[4] claiming that his right to confrontation was violated by his inability to cross-examine the treating physician(s) regarding whether Ms. Evans's facial injury was an "acute change" resulting from this incident. The court admitted the records over Boyd's objection.

Next, Boyd objected, *pro se*, to a portion of the medical records pertaining to a recommendation that Ms. Evans have surgery. Boyd claimed that it was unclear from the medical record whether Ms. Evans or the doctor had recommended the surgery. The court

[4] Boyd was presumably referring to the case of *Crawford v. Washington*, 541 U.S. 36 (2004).

overruled the objection. Finally, after the redactions appeared to be complete, defense counsel advised the court, "we've agreed on everything else, but [the] line about [the victim] being separated eight months ago[.]" The court granted defense counsel's request and ordered the statement that Ms. Evans had separated from her husband eight months ago be redacted as well.

On appeal, Boyd claims that the trial court erred by admitting two entries in Ms. Evans's medical records from Bowie Health Center, the "Focused Assessment" and "Emergency Department Triage Form," because these two checklist-type forms contained inadmissible statements. The "Focused Assessment" contained a section entitled, "Abuse/Neglect," which contained the following information. The Assessment included a question asking, "Do you feel safe at home?" A checkbox for the response "no" was selected. The "yes" checkbox was selected in response to the question, "Has anyone you know/love threatened or hurt you?" Finally, in response to the prompt, "Behavior suspicious of abuse," the "yes" checkbox was selected. Appellant also challenges the "Abuse/Neglect" section of the "Emergency Department Triage Form" in which the box beside the category, "evidence of abuse/neglect" is checked and the term "abuse" is circled.

Boyd asserts that these checklist portions of the medical records were inadmissible for three reasons. First, they were unrelated to diagnosis and treatment of Ms. Evans's facial injuries and were not admitted for any proper purpose. Second, they constituted evidence of prior bad acts. Third, they violated Boyd's right to confrontation. Critically, however, during the numerous colloquies with the court regarding various portions of Ms. Evans's medical records, Boyd never brought the checklist portions of the "Focused

Assessment" and the "Emergency Department Triage Form" to the court's attention or requested that any items be redacted from those portions of the medical records.

Maryland Rule 4-323(a) provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." "[W]hen a motion in limine to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Morton v. State*, 200 Md. App. 529, 540-41 (2011) (quoting *Klauenberg v. State*, 355 Md. 528, 539 (1999)). Absent a contemporaneous objection, the issue is unpreserved.

Appellant's arguments relating to the admissibility of the medical records, therefore, are not preserved for appeal. *See Joyner v. State*, 208 Md. App. 500, 519 (2012); *DeLeon v. State*, 407 Md. 16, 26 (2008) (explaining that the trial court must have an opportunity to consider the issue and rule on it first in the context of the trial); *Tucker v. State*, 237 Md. 422, 425 (1965) (holding that an objection cannot be made for the first time on appeal). "[A] principal purpose of the preservation requirement is to prevent 'sandbagging' and to give the trial court the opportunity to correct possible mistakes in its rulings." *Bazzle v. State*, 426 Md. 541, 562 (2012) (citing *Fisher v. State*, 367 Md. 218, 240 (2001)). *See also State v. Rose*, 345 Md. 238, 250 (1997) (observing that failing to adhere to preservation rules "would allow defense attorneys to remain silent in the face of the most egregious and obvious . . . errors at trial").

Because these issues were not presented before the trial court, the trial judge had no opportunity to assess the relevance, bad acts, and confrontation arguments raised now by Boyd on appeal. Indeed, had the issue been properly raised before the trial court, and had the court been persuaded by any of Boyd's contentions, the parties would have had the opportunity to redact the records accordingly. Because the issues were not raised below, however, we will not address these issues on appeal.[5]

II. The Trial Court Did Not Abuse its Discretion in Declining to Ask the Requested Voir Dire Questions.

Boyd further contends that the court erred in failing to ask requested *voir dire* questions, but concedes that the questions were discretionary. The State asserts that the issue is unpreserved, but in any event, maintains that the trial court properly exercised its discretion in declining to ask the questions. We disagree with the State on the preservation issue because, as we shall explain, the record reflects that defense counsel requested two *voir dire* questions which were not propounded upon the *venire.* We agree with the State, however, on the merits, and hold that the trial court did not abuse its discretion by declining to ask Boyd's requested *voir dire* questions.

The relevant *voir dire* questions requested by Boyd were:

> 18. Is there any member of the prospective jury panel who would hesitate to render a verdict of not guilty if you had a

[5] We do not suggest that we believe it is likely that the trial court would have been persuaded of Boyd's contentions that portions of the "Focused Assessment" and "Emergency Department Triage Form" were inadmissible. Indeed, the State presents multiple arguments on appeal as to why Boyd's evidentiary arguments fail on the merits. Because the trial court was deprived of addressing these issues, however, we will not address them here.

> hunch that the Defendant had committed the alleged crime, but were not convinced of that fact beyond a reasonable doubt?
>
> 19. The Court will instruct you that the Defendant is presumed to be innocent of the offenses charged throughout the trial unless and until the Defendant is proven guilty beyond a reasonable doubt. Is there any member of the jury panel who would be unable to give the Defendant the benefit of the presumption of innocence?
>
> 20. Under the law the Defendant has an absolute right to remain silent and to refuse to testify. No adverse inference or inference of guilt[] may be drawn from the refusal to testify. Does any prospective juror believe that the Defendant has a duty or responsibility to testify or that the Defendant must be guilty merely because the Defendant may refuse to testify?

When asked to propound the questions, the court responded, "I think one is enough. I asked the presumption of innocence and the rest I think I'll save for later." Boyd concedes on appeal that the trial judge asked a question that was "substantively identical to defense question number 19, addressing the presumption of innocence," but asserts that the court erred in declining to ask questions 18 and 20.

Maryland Rule 4-323(c) provides that an objection to a *voir dire* question is sufficient by making known to the court "the action that the party desires the court to take or the objection to the action of the court." The objection need not be stated with particularity or specific language to be preserved. *Newman v. State*, 156 Md. App. 20, 51 (2003), *rev'd on other grounds*, 384 Md. 285 (2004). Here, defense counsel's request, in writing and on the record, to include the proposed questions was sufficient to preserve the issue on appeal. *See Baker v. State*, 157 Md. App. 600, 610 (2004).

Having determined the issue is preserved for appellate review, we turn to the substantive issue of whether the trial court abused its discretion in declining to include the appellant's proposed questions in the *voir dire*. Maryland courts employ "limited *voir dire*. That is, in Maryland, the sole purpose of *voir dire* 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]" *Pearson v. State*, 437 Md. 350, 356 (2014) (internal quotation and citation omitted). The Court of Appeals has identified "two broad areas of inquiry that may reveal cause for a juror's disqualification: (1) examination to determine whether the prospective juror meets the minimum statutory qualifications for jury service, and (2) examination to discover the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to have undue influence over him." *Washington v. State*, 425 Md. 306, 313 (2012) (citing *Davis v. State*, 333 Md. 27, 35-36 (1993)).

A trial court's decision whether to ask a requested *voir dire* question is reviewed for abuse of discretion based on a review of the record of the *voir dire* process as a whole. *Pearson*, *supra*, 437 Md. at 356 (citing *Washington*, 425 Md. at 314). "Questions which are not directed at a specific ground for disqualification, which are merely 'fishing' for information to assist in the exercise of peremptory challenges, which probe the prospective juror's knowledge of the law, which ask a juror to make a specific commitment, or which address sentencing considerations are not proper in *voir dire*." *State v. Stewart*, 399 Md. 146, 162 (2007).

The Court of Appeals's decision in *Twining v. State,* 234 Md. 97 (1964), is dispositive of the *voir dire* issue in the present case. In *Twining*, the Court held that the

trial court did not abuse its discretion by declining to ask prospective jurors whether they would give the defendant the benefits of the presumption of innocence and the burden of proof. *Id.* at 100. The Court of Appeals explained that "[i]t is generally recognized that it is inappropriate to instruct on law at this stage of the case or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law." *Id*. In *Twining*, as in the case at bar, the requested *voir dire* questions were subsequently covered by the court in the jury instructions.

Boyd does not dispute that *Twining* is controlling precedent. Rather, Boyd contends that *Twining* is outdated and should be abandoned in favor of permitting, as of right, questions which aid in the intelligent exercise of peremptory challenges. We are unpersuaded that the Court's holding in *Twining* is inconsistent with more recent cases or that it should be expanded to include, at the *voir dire* stage, questions of law more appropriately addressed in jury instructions. We, therefore, hold that the court did not abuse its discretion by declining to ask the requested *voir dire* questions.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.