Circuit Court for Baltimore City
Case No. 118338020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2167

September Term, 2019

KARACA HYMAN

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: April 26, 2021

Karaca Hyman, appellant, was charged with murder and related charges following the shooting death of an individual outside of a nightclub in Baltimore. At trial in the Circuit Court for Baltimore City, appellant admitted to the shooting but claimed that he acted in self-defense. The jury ultimately convicted appellant of second-degree murder, use of a firearm in the commission of a crime of violence, and wearing, carrying, or transporting a handgun. The court sentenced appellant to a total term of 55 years' imprisonment, with five years suspended, to be followed by a five-year term of probation. In this appeal, appellant presents a single question for our review, which we have rephrased as two questions. They are:

1. Did the trial court err in preventing appellant from testifying that, prior to the shooting, some "guys" told him that they were "going to beat [his] ass?"

2. Did the trial court err in preventing appellant from testifying that he "had a prior experience with people that scared [him] out of money?"

Regarding the first question, we hold that any error in excluding appellant's statement that people threatened to "beat [his] ass" was harmless beyond a reasonable doubt. As to the second question, we hold that appellant failed to preserve this issue for review, but even if preserved, the court did not err in excluding the evidence. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

In the early morning hours of September 30, 2018, appellant shot and killed Abdoulie Jallow outside of Club Oxygen, a nightclub in Baltimore. Appellant was later

arrested and charged with first-degree murder, second-degree murder, and related handgun offenses.

At trial, Sean Pratt testified that, in the hours leading up to the shooting, he and a group of eight or nine people, including the victim, Jallow, had gone to Club Oxygen to celebrate Pratt's girlfriend's birthday. At approximately 2:00 a.m., the group members called a car service to take them home. The group then left the nightclub and went to a nearby corner, where they waited for their rides. While the group was waiting, a woman approached asking for money, and Pratt gave her a dollar. Appellant, who was standing nearby but was not part of the group, expressed his disapproval at Pratt's decision to give the woman money, and an argument between appellant and several members of the group ensued. During the argument, Pratt called appellant a "bitch," at which point appellant stated: "You know what, I got something for you guys." According to Pratt, appellant then walked away and got in his vehicle, which was parked nearby, while Pratt walked across the street to look for his ride. Shortly thereafter, appellant drove back to the corner where the group had been standing and slammed on his brakes, hitting Jallow with his vehicle in the process. Pratt, who was still across the street, observed Jallow say something to appellant. Pratt then heard gunshots and saw appellant speed off.

During Pratt's testimony, the State played video footage of the incident that had been captured by several nearby security cameras. In the video, Pratt, Jallow, and the other group members can be seen standing on the street corner outside of Club Oxygen just prior to the shooting. Appellant is then seen approaching the group members, interacting with them for a brief moment, and then walking away from the group to the other side of the

street. Upon reaching the opposite side of the street, appellant turns around and walks back across the street to where the group is standing. After another brief encounter with the group, appellant again walks away from the group to the other side of the street, at which point he disappears from view. Approximately three minutes later, a sedan can be seen turning the corner and bumping into Jallow, who was walking across the street. Jallow walks around the front of the vehicle and approaches the driver's side door. The door opens, and, after an apparent struggle, Jallow falls to the ground. The vehicle then speeds away.

Appellant elected to testify, admitting to the shooting but claiming that he shot Jallow in self-defense. Appellant testified that he argued with one of the group members about his refusal to give money to a woman who was panhandling in the area. Appellant testified that eventually two other group members became involved in the argument. Appellant testified that the three group members were "bigger" than him and were "trying to fight." Appellant stated that he decided to walk away because he did not want "to stand there and get beat on by three guys."

As he was walking away from the group, appellant decided to go back and apologize. Upon returning to the group, he observed that the three men with whom he had been arguing were "mad and pissed," that they "seemed like they wanted to fight," and that one of the men was "reaching at his waist." Appellant recounted that he became fearful, so he turned around and walked to his vehicle, which was parked nearby. He then got into his vehicle and drove away. According to appellant, as he was turning onto Calvert Street, he observed several people crossing the street, which required him to make a wide turn. In

so doing, appellant bumped one of the pedestrians with his vehicle. Appellant testified that he then stopped his vehicle and opened the driver's side door so that he could apologize. As appellant was opening the door, one of the men with whom appellant had been arguing approached and punched him in the face. Appellant testified that the man then tried to grab him and pull him out of the car. Fearing for his life, appellant reached under his seat, grabbed a handgun he had stored there, and shot the man. The man appellant shot, Jallow, died as a result of the shooting.

Ultimately, the jury found appellant not guilty of first-degree murder, but convicted him of second-degree murder and related handgun charges. This timely appeal followed.

DISCUSSION

I.

Appellant's first claim of error concerns his testimony regarding his encounter with the group on the night of the shooting and his decision to re-approach the group after initially walking away:

> [DEFENSE]: What did you do?
>
> [APPELLANT]: I started to walk away. As I'm walking away, they was saying things to me. I turned around. I was, like, "You guys are crazy." I got close to the corner and I was, like -- I just said to myself, "You know what? The situation is not that serious. Let me go back and apologize to these guys, because I don't want no -- it's three guys, and I don't want to be followed, and I don't know what could happen."
>
> So I turned around, went back, and was, like, "Look, I'm sorry if I came across anyway," but I guess at this point, it -- the initial encounter that

we already had, they was already mad and pissed. It just seemed like they wanted to fight me. You know, all three of these guys wanted to fight me, and they -- the gestures that they was making, like I don't know --

[DEFENSE]: What were the gestures?

[APPELLANT]: Like, they was -- one was, like, almost, like, reaching at his waist. I don't know if these guys got weapons or anything of that nature. So I immediately start backing up and I start walking away, like, "You guys are fricking crazy. I only came over here just to apologize. It was nothing that serious. I was just telling her I'm not giving her any money. So I'm just -- I'm walking away from this situation" pretty much.

You know, just to get away, because I don't know these guys. It's -- they're already telling me that they're going to --

[STATE]: Objection.

[APPELLANT]: -- beat my ass.

THE COURT: Sustained.

[STATE]: Move to strike.

THE COURT: Next question.
Stricken. Please disregard --

[DEFENSE]: Did what they --

THE COURT: -- the last part of that answer.

[DEFENSE]: Did what they say to you have an effect on what you did?

[APPELLANT]: Say that again?

[DEFENSE]:	Did what they say to you have an effect on what you did?
[APPELLANT]:	Yes, that's why I immediately start walking --
[DEFENSE]:	What was it that's said --
[STATE]:	Objection.
[DEFENSE]:	-- that made you come back.
THE COURT:	Sustained. Come on up if you need an answer.
[DEFENSE]:	No, no --
THE COURT:	I sustained --
[DEFENSE]:	-- I'm --
THE COURT:	-- the objection.
[DEFENSE]:	-- thinking it through.
THE COURT:	Okay. Thank you.

According to appellant, the court erred in sustaining the State's objection because the testimony was relevant and did not constitute inadmissible hearsay. The State responds that the claim is unpreserved because appellant failed to make an appropriate proffer at trial regarding the substance of the testimony. We reject the State's preservation argument, but conclude that any error in excluding the testimony was harmless beyond a reasonable doubt.

Appellant sufficiently preserved the issue for our review. To be sure, the State is correct in asserting that, "Where evidence is excluded, a proffer of substance and relevance must be made in order to preserve the issue for appeal." *Pickett v. State*, 222 Md. App.

322, 345 (2015) (quoting *S. Kaywood Cmty. Ass'n v. Long*, 208 Md. App. 135, 163 (2012)). Where the substance is apparent from the context, however, no such proffer is required. *Taylor v. State*, 226 Md. App. 317, 378 (2016) (citing Md. Rule 5-103(a)(2)). Appellant's testimony that "It just seemed like they wanted to fight me. You know, all three of these guys wanted to fight me," coupled with his observation that they were making threatening gestures, unequivocally demonstrated the substance of his intended testimony—that he believed the group wished to fight or hurt him. Accordingly, appellant was not required to proffer the substance of the excluded testimony here.

Although appellant preserved this issue for our review, we nevertheless hold that any error in excluding appellant's testimony was harmless beyond a reasonable doubt. In *Dorsey v. State*, the Court of Appeals explained the harmless error standard:

> 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.

276 Md. 638, 659 (1976). Regarding claims that a trial court erroneously excluded evidence, the Court of Appeals has recently stated, "The exclusion of evidence is harmless if it is 'unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.'" *Vigna v. State*, 470 Md. 418, 453 (2020) (quoting *Dionas v. State*, 436 Md. 97, 117 (2013)). Moreover, the improper exclusion of evidence is generally harmless where the substance of the excluded evidence was cumulative of other evidence. *Id.* at 454-56.

We conclude that the exclusion of appellant's testimony that the group of guys told him they were "going to beat [his] ass" was harmless beyond a reasonable doubt. This is so because, despite the court's exclusion, appellant introduced substantial other evidence that members of the group intended to harm him. As to his face-to-face encounter with the group, appellant testified without objection that when he turned around to apologize, the group "was already mad and pissed. It just seemed like they wanted to fight [him]." Appellant further elaborated that "all three of these guys wanted to fight [him]," and that they made gestures which he perceived to be threatening. It was during this same encounter that the group apparently threatened to "beat [appellant's] ass." Although the court excluded this last reference, appellant was still able to testify that, during this part of the encounter, the group was angry with him, that it seemed like they wanted to fight him, and that they made threatening gestures toward him. Because the jury heard other contemporaneous evidence showing that the group was threatening to harm appellant, the evidence that the group threatened to "beat [appellant's] ass" was duplicative, and the court's exclusion of that evidence was harmless.

Our conclusion is further bolstered by the fact that appellant successfully introduced even stronger evidence to support his self-defense theory. Appellant testified without objection that, later, when he was in his vehicle after striking "a pedestrian," the victim actually "swung [appellant's] car door open, and then came inside, and pretty much punched [appellant] in [his] face." Thus, the jury learned that the group's earlier threats toward appellant—whatever they may have been—manifested in an actual attack. That evidence confirmed a physical altercation between appellant and Jallow rather than a more

amorphous and attenuated threat from the group. In our view, that evidence was substantially more relevant to appellant's self-defense theory than the prior threats and gestures.

In conclusion, given that evidence of the attack itself was admitted without objection, appellant's testimony that one or more members of the groups had verbalized an intention to "beat [his] ass" was cumulative to other evidence that the jury received, and therefore relatively unimportant in relation to other evidence in the record. *Vigna*, 470 Md. at 453. We are convinced that the court's exclusion of the one alleged threat had little or no impact on appellant's presentation of his self-defense theory of the case. Accordingly, even assuming that the trial court erred in excluding appellant's testimony on this point, we are convinced beyond a reasonable doubt that any error was harmless.

II.

Appellant's second claim of error concerns another instance in which the trial court excluded his testimony. On direct examination, appellant testified regarding the interaction he had with the woman asking for money prior to the shooting. During that testimony, defense counsel asked appellant if he "had an issue in the past with similar folks like that lady," and appellant testified that he had "seen a situation where someone was put out of a vehicle with their kids." At that point, the State objected, and the court sustained the objection and struck the testimony. Defense counsel then asked appellant if his "prior experience" had "an [effect] on what [he] said to the lady," and appellant responded in the affirmative. When defense counsel asked about "that prior experience," the State again objected, and the court held a bench conference. At that bench conference, the State argued

that appellant's prior experience was a "collateral issue." The trial court agreed, finding that appellant's discussion of "some situation from some unknown date of some unknown location" was irrelevant to his interaction with the woman on the night of the shooting.

Later, during cross-examination, the State asked appellant if he "got angry" during his initial argument with the victim and the other group members over appellant's decision not to give the woman any money. Appellant responded that initially, he was "not angry," but that he "was just telling people to mind their business." Appellant added that he did become angry once the situation escalated.

On re-direct, defense counsel asked appellant about getting angry:

> [DEFENSE]: What was it that [made] you angry?
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> [APPELLANT]: It's just -- I mean, anybody would get angry if you're talking to one person and then a complete stranger just jump in your conversation, and start yelling at you, and you don't even know them.
>
> [DEFENSE]: When you said that they were yelling at you --
>
> [APPELLANT]: I mean, like, you know, demanding you to give your money to somebody that you don't even know. And me, myself, already had a prior experience with people that scared me out of money.
>
> [STATE]: Objection.
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> THE COURT: Sustained.
>
> [STATE]: Move to strike.
>
> THE COURT: Jury --
>
> [APPELLANT]: Oh, sorry.

THE COURT: -- will disregard --

[DEFENSE]: Yeah, you can't tell us --

THE COURT: -- that last statement.

[APPELLANT]: Sorry.

Appellant argues that the trial court erred in striking his testimony on re-direct that he "had a prior experience with people that scared [him] out of money." He claims that the testimony was relevant to show that "he was not simply 'itching for a fight' when he argued with Mr. Jallow and others" but that he was "merely upset that total strangers were giving him a hard time when he refused to give money to another stranger." The State responds that appellant's claim is unpreserved because he failed to proffer any basis for the trial court to admit the testimony and, in any event, acquiesced to the court's ruling. The State continues that, even if appellant's claim were preserved, the court did not err in excluding the testimony because it was irrelevant. We agree with the State that appellant failed to sufficiently preserve this issue for our review, and even if the issue were preserved, we have no difficulty concluding that the court properly excluded the testimony as irrelevant.

It is well-settled in Maryland that "A litigant who acquiesces in a ruling is completely deprived of the right to complain about that ruling." *Parker v. State*, 402 Md. 372, 405 (2007) (internal quotation marks omitted) (quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 535 (1995)). The transcript shows that appellant acquiesced to the court's decision to exclude the testimony: his counsel never challenged the court's evidentiary ruling, and counsel apparently agreed with that ruling by telling appellant, "Yeah you can't

tell us[.]" *See, e.g., Whittington v. State*, 147 Md. App. 496, 537 (2002) ("Appellant never disputed the trial court's understanding of the scope of Dr. Brody's expert testimony. . . . Because appellant never objected to the court's ruling, and acquiesced to it, [appellant's] complaint cannot be heard on appeal.").

Not only did appellant acquiesce to the court's ruling, but he also failed to proffer the substance and relevance of the excluded evidence. As noted above, when a court excludes evidence, the party must proffer its substance and relevance to preserve the issue for appeal. *Pickett*, 222 Md. App. at 345. If the substance is apparent from the context however, no proffer is required. *Taylor*, 226 Md. at 378. In his brief, appellant argues that his prior experience in which he was "scared [] out of money" was necessary to show that "he was not simply 'itching for a fight' when he argued" with the group. In our view, it would not be immediately apparent to the trial court that appellant intended to use evidence that he was previously "scared [] out of money" to prove that he was not "itching for a fight." Accordingly, in order to preserve the issue for our review, appellant was required to proffer that his being "scared [] out of money" was relevant to show that he was not predisposed to fight the group members. Rather than advising appellant, "Yeah, you can't tell us," defense counsel could and should have instead proffered to the court the substance and relevance of the evidence.

Finally, assuming *arguendo* that appellant had successfully preserved the issue for appellate review, we would nevertheless hold that the trial court did not err in sustaining the State's objection because the evidence was not relevant. *See* Md. Rule 5-401 (defining "relevant evidence" as "evidence having 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").

Appellant argues that the evidence would have established that "he was not simply 'itching for a fight' when he argued with Mr. Jallow and others," yet we fail to see how appellant's experience of having been "scared [] out of money" at some point in the past would have made that fact any more or less probable. There is no dispute that appellant argued with others about giving money to the woman. That he may have had a negative prior experience about giving money to another person constitutes a collateral matter that the court properly excluded. *See Wise v. State*, 132 Md. App. 127, 137 (2000) ("Evidence of collateral facts, or of [facts] which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute, should be excluded, for the reason that such evidence tends to divert the minds of the jury from the real point in issue, and may arouse their prejudices." (alteration in original) (quoting *Dorsey*, 276 Md. at 643)). The evidence becomes even more collateral in light of the subsequent physical altercation that ensued between appellant and Jallow. Appellant also argues that the testimony would have countered the State's insinuation that his interaction with the woman showed his "volatile state of mind," yet appellant fails to cite any instance in the record where the State insinuated as much. In short, appellant failed to meet his burden for establishing relevancy. *See Snyder v. State*, 361 Md. 580, 591-92 (2000) (noting that the burden of establishing relevancy is on the proponent of the evidence).

In conclusion, appellant's testimony regarding some "prior experience" in which he was "scared [] out of money" was a collateral fact that had little or no connection to any

material fact or matter in dispute and could have easily confused or misled the jury. *Wise*, 132 Md. App. at 137. Thus, the trial court did not abuse its discretion in excluding the testimony.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.