

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2281

September Term, 2023

TONY MCPHERSON

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: July 9, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Prince George’s County found Tony McPherson, appellant, guilty of first-degree rape, second-degree rape, first-degree assault, second-degree assault, third-degree burglary, third-degree home invasion, malicious destruction of property, and two counts of trespassing on private property. After merging convictions as appropriate, the court imposed aggregate sentences of life imprisonment, suspending all but twenty-five years, plus five years’ supervised probation upon release.

On appeal, appellant presents four questions:

1. Did the trial court err in allowing the alleged victim to describe the actions of her manager, who did not testify at trial?
2. Did the trial court abuse its discretion in allowing Detective Fairbrother to offer opinion testimony?
3. Did the trial court err by allowing the alleged victim to testify as to the effect the alleged incident had on her life?
4. Did the trial court err in admitting irrelevant and prejudicial post-incident evidence?

We perceive no reversible error. Therefore, we affirm the judgments.

BACKGROUND

F.L. met appellant in December 2020 and dated him until August 2021. On September 15, 2021, appellant appeared at a restaurant at which F.L. was working. F.L. testified that, as she entered the kitchen, appellant went with her. She tried to stop him but he succeeded in getting into the kitchen. Over objection, F.L. was permitted to testify that her manager tried to get appellant to leave and that he did so “[b]y saying you can’t go—he couldn’t go there into the kitchen, saying, sorry. Saying sorry.” Ultimately, F.L.’s

manager succeeded in removing appellant from the premises. This testimony is the subject of appellant's first question.

F.L.'s testimony continued as follows. After leaving work, F.L. went home. She received a telephone call from appellant, which she did not answer. Appellant called again, and F.L. answered. Appellant asked her to open the door, or he would kick it open. When F.L. opened the door slightly, appellant pushed it open and entered the apartment. Appellant tried to get F.L.'s phone, which she resisted while backing up, and they ended up in her bedroom. Appellant pushed F.L. onto the bed, choked her with one hand, and grabbed her phone with the other hand. Appellant tried to remove F.L.'s pants. F.L. told him to stop, and he laughed. He grabbed some money and F.L.'s phone and ran outside. F.L. followed, they struggled, and F.L. retrieved her phone.

F.L. returned to her apartment, and appellant entered a second time. Again, they struggled to gain control of the phone, backing up while doing so, and again ending up in F.L.'s bedroom. Appellant removed F.L.'s pants, kissed her, and put his penis inside of her. After ejaculating, appellant grabbed F.L.'s phone and ran outside. Again, F.L. followed and retrieved her phone.

F.L. returned to her apartment, and appellant entered a third time. Again, they struggled over the phone. Appellant "body slammed" F.L. At some point, appellant jumped to the ground from the balcony, and then re-entered the apartment. Ultimately, F.L. convinced appellant to leave.

F.L. called her cousin, Rosalind Blount. Ms. Blount went to F.L.'s apartment and took her to the hospital for an examination.

F.L. testified that, after the incident, she did not live in the apartment. She stayed with a cousin for a period of time and then moved to Mississippi. She testified that she had nightmares, she did not like to be touched by anyone, and she was not able to have romantic relationships. This testimony is the subject of appellant’s question 3.

Ms. Blount testified as follows. On September 16, 2021, very early in the morning, F.L. called her on the phone. F.L. was crying and having difficulty speaking. Ms. Blount went to F.L.’s apartment. She noticed damage to the door. F.L. told her about the events involving appellant. Ms. Blount took F.L. to a commissioner to get a restraining order and then to a hospital.

Ms. Blount testified that, after the forensic examination, F.L. was upset, “nervous,” “jumpy,” and “sore” from bruising. The date is unclear, but at some point, F.L. moved out of her apartment. This testimony is the subject of appellant’s question 4.

Rodney L., F.L.’s father, testified that F.L. resided in an apartment with him. He was not home on September 15, 2021, but when he returned on September 16, 2021, he noticed damage to the front door. He also testified that F.L. did not reside in the apartment after September 15.

Jennifer Rich, a forensic nurse at the Capital Region Health Center, testified as an expert in forensic examination. She testified, *inter alia*, to the history relayed by F.L. and that bruising on F.L.’s neck was consistent with strangulation.

Detective Brett Fairbrother testified that he investigated the incident. He interviewed F.L., her father, and Ms. Blount. He visited F.L.’s apartment, reviewed the forensic examination at the hospital, and reviewed the photographs taken during the

examination. He did not testify to the content of the interviews or to what he had observed in the apartment. Over objection, he testified that the information that he received from F.L. was consistent with the information he received from other sources. This testimony is the subject of appellant's question 2.

Appellant testified on his own behalf. Although agreeing with some of the events as testified to by F.L., he denied raping and strangling her, testifying that the actions occurred during consensual sex.

DISCUSSION

1.

During the testimony of F.L., the prosecutor questioned her about the restaurant manager's involvement when appellant appeared at the restaurant where she was working. The court ruled that F.L. could testify as to what she observed the manager do. She testified that the manager tried to get appellant to leave by telling him he could not go into the kitchen, as quoted above.

Appellant acknowledges that the court's ruling was that what was said by the manager was hearsay but that his actions were not hearsay. Relying on *Stoddard v. State*, 157 Md. App. 247, 257 (2004), *rev'd on other grounds*, 389 Md. 681 (2005), in which this Court discussed when nonverbal actions constitute hearsay, appellant contends the nonverbal conduct of the manager was hearsay and inadmissible. Appellant points only to the verbal statement made by the manager, however, not to his physical conduct. Therefore, we interpret appellant's argument to be that the act of making the statement was inadmissible nonverbal conduct.

Appellant acknowledges that the challenged testimony relates to one of the elements of the trespassing on private property charges and, therefore, acknowledges that it affects only those convictions.

Although nonverbal action may be hearsay, in the instant matter, the testimony objected to was a verbal statement that was not admitted for its truth. It was admitted to show that it was said to appellant. One element of trespassing on private property is that the defendant must have notice not to enter the private property of another. The jury's instruction included that element. The statement here was a verbal act admitted to show what the appellant knew and was not hearsay. F.L. had personal knowledge of the fact that the statement was made and could so testify.

Moreover, on two occasions, appellant testified that the manager asked him to leave the restaurant. Thus, any error was harmless beyond a reasonable doubt. *Esposito v. State*, 264 Md. App. 54, 88 (2024) (“The law in this State is settled that where a witness later gives testimony, *without objection*, which is to the same effect as earlier testimony to which an objection was overruled, any error in the earlier ruling is harmless.” (quoting *Robeson v. State*, 285 Md. 498, 507 (1979))).

2.

Detective Fairbrother testified that the information he received from F.L. was consistent with the information that he received from other sources. Appellant contends that this was lay opinion testimony, and the court abused its discretion in admitting it. Appellant argues that the testimony was not based on the perception of the witness and was not helpful to the trier of fact, as required by Md. Rule 5-701. He explains that Detective

Fairbrother was not present when the events took place, and thus, the jury was just as capable of drawing inferences and conclusions.

Appellant relies on case law that precludes a witness from testifying as to the credibility of another witness. *See, e.g., Bohnert v. State*, 312 Md. 266 (1988); *Walter v. State*, 239 Md. App. 168 (2018).

In *Brooks v. State*, 439 Md. 698, 727 (2014), the Supreme Court of Maryland considered whether the trial court should have struck the testimony of an expert witness, a SAFE nurse, that the findings from her physical examination of a victim “would verify” what the victim told her about her encounter with the defendant. The prosecutor asked the nurse an open-ended question—whether the account that the victim had given the nurse during the examination was “consistent or inconsistent with” the injuries she observed on the victim. *Id.* at 728-29.

The question did not ask the nurse to reflect generally on the victim’s credibility or to endorse any version of facts. The Court noted the distinction between circumstances in which a witness expresses an opinion that simply vouches for the credibility of another witness, and situations in which a witness assesses whether a statement of another witness is consistent with other facts known to the testifying witness. The Court stated:

An answer that the injuries she observed were “consistent with” [the victim’s] statements to her would mean [the victim’s] version was not excluded from the set of possible explanations of her physical condition.

* * *

Had [the nurse] simply answered the prosecutor’s question in the way it was asked—that is, whether [the victim’s] statements to her were

“consistent or inconsistent with” the injuries she observed—[the nurse’s] answer would have been clearly admissible.”

Id. at 733-34 (footnote omitted).

That is the situation in this case. Detective Fairbrother relied on his own perception of the evidence and was helpful to the jury by providing his perception of similarity. He did not opine on the credibility of the evidence.

3. and 4.

Appellant argues that F.L.’s testimony about the effect on her life of the events involved herein is irrelevant. Relying on *Hutton v. State*, 339 Md. 480, 504 (1995), appellant argues that the evidence was introduced to impermissibly prove that F.L. had been raped. Appellant makes the same argument with respect to Ms. Blount’s testimony. Alternatively, with respect to both witnesses, appellant argues that any probative value is outweighed by the testimony’s prejudicial effect.

The State argues that, at trial, appellant argued only that the evidence was irrelevant. Thus, the argument based on weighing probative value versus prejudicial effect was not preserved.

The evidence is relevant. *Parker v. State*, 156 Md. App. 252, 270-71 (2004). In *Parker*, this Court stated:

If the commission of a crime can be expected to leave some mental traces on the criminal perpetrator, surely it must also leave its mark on the victim. Although we have found no Maryland case directly on point, evidence of a victim’s conduct following a sexual assault has been permitted in other states to demonstrate that the attack did occur or to show a lack of consent.

Id. at 271.

This Court then cited a number of cases from other states upholding the admissibility of evidence that, after an alleged rape, the alleged victim exhibited a change in behavior. This Court continued:

In the present case, appellant’s defense was that the victim and he had consensual sex. The evidence of [the victim’s] mood and actions following the (alleged) rape demonstrated, albeit circumstantially, that [the victim] had not engaged in consensual sex with her ex-boyfriend. [The victim’s] testimony, if believed, provided direct evidence that the changes in her behavior post-rape were due to the rape. [The victim’s] grandmother, of course, had no personal knowledge as to what had caused the change in [the victim’s] behavior. Nevertheless, from the fact that the abrupt behavioral change occurred closely on the heels of the rape, the jury could infer, legitimately, that [the victim’s] behavior changed due to the rape.

* * *

As mentioned earlier, appellant refers us to *Hutton v. State*, 339 Md. 480 (1995), and *State v. Allewalt*, 308 Md. 89 (1986), in support of his argument that evidence of post traumatic stress disorder is inadmissible at trial. Both *Hutton* and *Allewalt* concerned the admissibility of expert testimony about post traumatic stress disorder. In *Hutton*, the [Supreme Court of Maryland] concluded that “the admission of [post traumatic stress disorder] testimony to prove sexual abuse occurred was inadmissible and clearly error because such testimony goes beyond the limits of proper expert expression.” 339 Md. at 504. Nonetheless, the Court noted that such evidence would be admissible for purposes other than simply to establish that the offense had occurred. *Id.* The Court said: “The evidence might be offered, for example, *to show lack of consent* or to explain behavior that might be viewed as inconsistent with the happening of the event, such as a delay in reporting or recantation by the child.” *Id.* (citation omitted) (emphasis added).

In this case, the State did not prove, or attempt to prove, that [the victim] suffered from post traumatic stress disorder, nor was the admissibility of expert testimony at issue. Evidence of [the victim’s] behavior following the incident came only from the victim and her grandmother. We hold that the trial court did not abuse its discretion in admitting evidence of the changes in [the victim’s] behavior post-rape.

Id. at 273-74. The statements in *Parker* are applicable to this case.

Finally, even if appellant's argument based on weighing the evidence had been preserved, the court did not abuse its discretion in admitting the evidence.

We perceive no reversible error, and the judgments are affirmed.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS ASSESSED TO
APPELLANT.**