**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**June 26, 2018**

**Sheila T. Reiff**
**Clerk of Court of Appeals**



**Appeal No. 2017AP1021-CR** **Cir. Ct. No. 2015CF005190**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DELANO MAURICE WADE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS J. McADAMS, Judge. *Affirmed*.

Before Kessler, P.J., Brennan and Dugan, JJ.

¶1 DUGAN, J. Delano Maurice Wade appeals from a judgment of conviction, following a jury trial, for second-degree sexual assault and false

imprisonment, both with domestic abuse enhancers.[1] On appeal, Wade argues that the trial court erred in overruling trial counsel's hearsay objections to a police officer's testimony describing what the victim, A.C., told her about the incident and A.C.'s statements recorded in a "domestic violence supplement," and erred in discussing a jury question with trial counsel while Wade was not present.

¶2 The State argues that Wade forfeited his hearsay arguments and also forfeited his claim that he had a right to be present when the trial court discussed the question from the jury. The State further argues that any alleged errors were harmless. We agree with the State and affirm.

## BACKGROUND

¶3 Wade was living with his girlfriend, A.C., in her apartment. A.C. testified that on November 25, 2015, Wade came home at approximately 2:00 a.m. He accused A.C. of spending too much money with his food stamp card. Wade then told her she broke the rules and she owed him $5000.00—she did not know how she owed him any money.

¶4 Wade started kicking A.C. and when she ran to the door to leave, he grabbed her by the hair and said she was not going anywhere. Wade started hitting her with a liquor bottle. He then told her to lie down in a corner of the living room until he told her to get up. Then, he stomped her, kicked her, and burned her with cigarettes. Wade threw things at her, including a candle holder

[1] Wade's notice of appeal incorrectly states that he was convicted of first-degree sexual assault, which is contrary to the judgment. We have corrected the error.

that they had been using as an ash tray. The candle holder was full of cigarette butts when he threw it at her.

¶5 Wade then told A.C. to go into their bedroom and lie on the bed, which she did. He lay down next to her and kept kicking her every time she closed her eyes and tried to go to sleep. After a while he told her to perform penis-to-mouth sex on him. Wade then grabbed her by the hair and neck and said that he would break her jaw if she did not perform penis-to-mouth sex on him and "swallow everything." Wade then put his penis in A.C.'s mouth while he kept grabbing her neck. The mouth-to-penis sex lasted about ten minutes. While A.C. went to brush her teeth in the bathroom, Wade stood in the bathroom. He told A.C. multiple times that she was not going anywhere.

¶6 Wade and A.C. left the house later that day to go to a grocery store. On the way there, Wade drove A.C. around and asked men if they would "purchase [A.C.] for sex" because Wade claimed that she owed him money. Wade and A.C. went into the grocery store and while Wade was distracted by his cell phone, A.C. started signaling to other customers to call 911. Some customers started following Wade and A.C. around the store and appeared to call the police.

¶7 After paying for the groceries, Wade and A.C. got into Wade's car. A crowd of customers and a loss prevention officer followed Wade and A.C. outside. Two customers stopped Wade's car and asked, "Are you okay?" Wade told them that he was fine. The two customers then said that they were worried about A.C. In response, Wade started to drive away, and A.C. opened her car door and "jumped out [of] the car." Wade drove away and people helped A.C. back into the store. An ambulance arrived and took A.C. to a hospital where police

interviewed her and photographed her injuries. A doctor also obtained a history from A.C. regarding the assault and examined her.

¶8 Police escorted A.C. back to her apartment, and they searched it with her consent and took photographs. Police photographed the candle holder that Wade threw at A.C., which was laying on the floor with cigarette butts nearby. Police also photographed the liquor bottle that A.C. said Wade used to hit her. It was sitting on a ledge in the living room.

¶9 Two days after the assault, A.C. quit her job and moved to Florida, where her mother and brother lived. She stated that she moved to get away from Wade. She also left most of her belongings in Milwaukee.

¶10 We will recite further necessary facts as we address Wade's arguments.

## STANDARD OF REVIEW

¶11 ***Dalka v. Wisconsin Central, Ltd.*** summarizes the standard of review for evidentiary rulings:

> Whether to admit or exclude evidence is a decision left to the trial court's discretion. We will uphold the trial court's decision to admit or exclude evidence if the trial court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion. If the trial court failed to adequately explain its reasoning, we may search the record to determine if it supports the court's discretionary decision.

***Id.***, 2012 WI App 22, ¶51, 339 Wis. 2d 361, 811 N.W.2d 834 (citations and internal quotation marks omitted).

¶12 However, without an objection, the issue of whether the trial court properly exercised its discretion has not been preserved for appeal. ***State v. Romero***, 147 Wis. 2d 264, 274, 432 N.W.2d 899 (1988) (stating that "[i]n order to preserve an issue for appeal as a matter of right, a party must object to the error at trial, stating the proper ground for the objection"). "The [trial] court has no duty to independently strike testimony that is inadmissible." ***State v. Johnson***, 2004 WI 94, ¶25, 273 Wis. 2d 626, 681 N.W.2d 901.

¶13 Furthermore, "objections to the admissibility of evidence must be made promptly and in terms which inform the [trial] court of the exact grounds upon which the objection is based." ***State v. Hartman***, 145 Wis. 2d 1, 9, 426 N.W.2d 320 (1988). "[A] specific objection overruled will be effective only to the extent of the ground specified." ***State v. Hoffman***, 240 Wis. 142, 152, 2 N.W.2d 707 (1942). "[T]he admissibility of evidence involves a trial court's discretion, and an objection serves the purpose of allowing the trial court and the other party to correct any evidentiary error during the trial." ***State v. Kutz***, 2003 WI App 205, ¶31, 267 Wis. 2d 531, 671 N.W.2d 660. To accomplish the goal of allowing a party to correct any evidentiary error during the trial, "[t]his court has repeatedly held that one of the rules of evidence is that an objection must be made as soon as the opponent might reasonably be aware of the objectionable nature of the testimony. Failure to object results in a waiver of any contest to that evidence."[2]

[2] In ***State v. Ndina*** our supreme court clarified the distinction between the terms "forfeiture" and "waiver." *See* ***id.***, 2009 WI 21, ¶¶28-32, 315 Wis. 2d 653, 761 N.W.2d 612. "Although cases sometimes use the words 'forfeiture' and 'waiver' interchangeably, the two words embody very different legal concepts. 'Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.'" ***Id.***, ¶29 (citation omitted). Thus, although ***Holmes v. State*** used the term "waiver," the more accurate term in this context is forfeiture. *See* ***id.***, 76 Wis. 2d 259, 272, 251 N.W.2d 56 (1977).

***Holmes v. State***, 76 Wis. 2d 259, 272, 251 N.W.2d 56 (1977) (internal citations omitted).

¶14 This court reviews *de novo* whether an objection to the admission of evidence adequately preserved the issue for appeal.

## I. Wade Forfeited Any Hearsay Objection to the Police Officer's Testimony about A.C.'s Statements to Her

¶15 Wade argues that the trial court erred regarding the testimony by a police officer about A.C.'s report to the officer about her injuries. Trial counsel objected to the first statement on the ground of hearsay. The trial court held a sidebar conference, but the conference was not recorded, and when the trial court reconvened on the record it did not rule on the objection. Moreover, the question was not repeated. Therefore, there was no error.

¶16 Wade further argues that two other statements by A.C. to the officer about her injuries should have been excluded. However, trial counsel did not object to those questions and, therefore, forfeited the objections. Therefore, there was no error.

¶17 During the testimony of the police officer who interviewed A.C. at the hospital, the prosecutor asked the following questions and the officer gave the following answers:

| | |
|---|---|
| [Prosecutor] | So did [A.C.] describe what happened to her? |
| [Officer] | She was in her apartment on—earlier that day—earlier in the day. Starting from the 23rd or the 25th? |
| [Prosecutor] | No, that day. The 25th, the day you interviewed her. |

> [Officer] Okay. The 25th she said that she returned home at about—she said it was probably around 12 a.m. on the 25th. Mr. Wade was there. She said he didn't really talk to her. Seemed upset. Ended up leaving and returning. Didn't really talk to her.

At that point trial counsel stated, "Judge, I'm going to object to hearsay." The trial court asked the State to respond and the prosecutor stated, "[a]t this point it's not hearsay. It's a prior consistent statement as the victim's credibility is being called into question by defense." The court then stated, "[c]an I see the attorneys at side bar?"

¶18 When the trial was reconvened, the trial court merely stated to the prosecutor "repeat the question, or have it read, back please." The trial court did not make a ruling on the record and the side bar was not recorded. Further, the prosecutor did not repeat the question or have it read back. Rather, the prosecutor asked, "[y]ou received a report from [A.C.] that involved allegations the suspect had physical contact with her, correct?" Trial counsel did not object to that question, and the officer answered, "[c]orrect."

¶19 Later in the officer's testimony, the prosecutor asked the officer if A.C. explained to her where she was injured. In response, the officer testified:

> Well, basically [she] told me all over her body, but she was specific in saying that she was kicked on her legs, her buttock area, ribs, I believe it was her elbow. And she said that at one point she was covering her body, her face, because she didn't want [him] to hit her face, and he was still hitting her.

Trial counsel did not object to that question or answer on any grounds.

¶20 As noted earlier, without an objection stating the proper grounds, the issue of whether the trial court properly exercised its discretion has not been preserved for appeal. ***Romero***, 147 Wis. 2d at 274 (stating that "[i]n order to preserve an issue for appeal as a matter of right, a party must object to the error at trial, stating the proper ground for the objection"). Here, trial counsel failed to object on any grounds to the prosecutor's question regarding A.C.'s injuries. Moreover, if trial counsel objected to that testimony during the sidebar, the objection was not preserved on appeal because it was not made on the record. "Counsel who rely on unrecorded sidebar conferences do so at their own peril." ***State v. Wedgeworth***, 100 Wis. 2d 514, 528, 302 N.W.2d 810 (1981). Based on this record, we conclude that trial counsel forfeited any hearsay objection to the officer's limited answer.

## II. Wade Forfeited Any Hearsay Objection to the Officer's Testimony about the Milwaukee Police Department Domestic Violence Supplemental Form

¶21 Wade also argues that the trial court erred when it overruled his hearsay objection regarding the same officer's testimony about the Milwaukee police department domestic violence supplemental form. Trial counsel's first objection on the grounds of hearsay was premature because the answer did not call for a hearsay statement. Moreover, the question was not repeated. Therefore, there was no error. When the prosecutor moved to admit the form, trial counsel objected on the grounds of foundation, not hearsay. The prosecutor then cured the foundation objection through questions and answers establishing that the officer filled out the form which made it a business record. Any hearsay objection was forfeited and therefore, there was no error.

¶22 The officer's testimony continued, and the prosecutor asked the officer about the Milwaukee police department domestic violence supplemental form for this incident. She stated that the form is partially filled out by the police, that it gets called in to the domestic violence hot line, and that the back of the form contains a section where the victim can circle or mark where on the diagram of a body he or she was hurt by the suspect and answer other questions about the incident. The form also contains biographical information regarding the people involved in the incident. When asked, the officer stated that she did not fill out the form—it was filled out by another officer at the scene.[3]

¶23 The following exchange then occurred:

| | |
|---|---|
| [Prosecutor] | Okay. This document that you are looking at—Does it reflect the victim's demeanor when it's filled out? |
| [Officer] | Yes, it does. |
| [Trial Counsel] | I'm going to object to the next question as hearsay. |
| [Prosecutor] | Objecting? |
| [Trial Court] | Well – |
| [Prosecutor] | I actually haven't asked a question. |
| [Trial Counsel] | I can wait. |

However, the prosecutor did not then follow up with a question about whether the form reflected the victim's demeanor.

¶24 Later, during the officer's testimony, the following exchange occurred:

[3] The officer subsequently explained that she filled out part of the form, but not all of it.

| | |
|---|---|
| [Prosecutor] | Okay. Where on this document did she report her injuries? Or is there a diagram on the document where she reported her injuries? |
| [Officer] | There is. |
| [Prosecutor] | Okay. I'm going to move [the form] into evidence. |
| [Trial Counsel] | I'm going to object on foundation grounds, Judge. |
| [Trial Court] | Can you be a little bit more specific for me, Counsel? |
| [Trial Counsel] | Well, it's not clear who put together which parts and who was the source for the different parts. |
| [Trial Court] | Can I see what we're talking about, [prosecutor]? |
| [Officer] | This portion of it was her. |
| [Trial Court] | So—I'm sorry. This is a report your witness filled out, [prosecutor]? |
| [Prosecutor] | And that she recognizes as a business record. |
| [Trial Court] | The objection will be overruled then. |

The prosecutor then asked the officer about the part of the form that A.C. filled out by circling the areas on her body where she was injured. Trial counsel did not object to any of those questions.

¶25 As noted earlier, without an objection stating the proper grounds, the issue of whether the trial court properly exercised its discretion has not been preserved for appeal. *See* ***Romero***, 147 Wis. 2d at 274 (stating that "[i]n order to preserve an issue for appeal as a matter of right, a party must object to the error at trial, stating the proper ground for the objection"). The trial court has no duty to independently strike inadmissible testimony. *See* ***Johnson***, 273 Wis. 2d 626, ¶25.

¶26 Furthermore, as we have stated, "objections to the admissibility of evidence must be made promptly and in terms which inform the [trial] court of the exact grounds upon which the objection is based." ***Hartman***, 145 Wis. 2d at 9. "[A] specific objection overruled will be effective only to the extent of the ground specified." ***Hoffman***, 240 Wis. at 152.

¶27 Here, trial counsel objected to the admission of the domestic violence form on the ground of foundation, stating that "it's not clear who put together which parts and who was the source for the different parts." At no time did trial counsel object to the form on the grounds of hearsay. The prosecutor responded that the officer filled out the form and the officer recognized the form as a business record. WISCONSIN STAT. § 908.03(6) (2015-16), "the so-called business records exception, allows the introduction of memorandum made in the course of a regularly conducted activity, which includes police reports."[4] *See* ***State v. Gilles***, 173 Wis. 2d 101, 113, 496 N.W.2d 133 (Ct. App. 1992). However, if the report contains a statement by a person who is not part of the police department, then "an additional level of hearsay is presented which must fall within some other exception" before that statement could be admitted. ***Id.*** at 113-14.

¶28 Wade concedes that the business records exception includes police reports but argues that where the report contains an additional level of hearsay, an exception for that hearsay must also be found. In his rebuttal brief, Wade concedes that trial counsel's objections were not the model of clarity, but he

[4] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

argues that, although this is a closer call, a fair reading of trial counsel's objections does not permit a finding that he forfeited the hearsay objection.

¶29 However, the record reflects that trial counsel objected when the officer was asked if the form reflected the victim's demeanor when it was filled out. Trial counsel stated that he was objecting to the next question on the grounds of hearsay. However, the prosecutor did not ask the officer how A.C.'s demeanor was reflected on the form.[5] Further, it was not until the prosecutor moved for the admission of the form that trial counsel objected. At that time, trial counsel objected on the ground of foundation, not hearsay. When the trial court asked trial counsel to be more specific in the objection, trial counsel did not object on the grounds of hearsay or say anything about hearsay. Rather, trial counsel stated that it was not clear who put together which parts and who was the source for the different parts of the form.

¶30 The trial court then asked to see the form and asked the prosecutor if the officer had filled out the form. The prosecutor indicated that the officer had filled out the form and recognized it as a business record. Following this exchange, trial counsel did not attempt to clarify his objection beyond the broad objection of lack of foundation. Trial counsel also did not object when the officer was asked to point out where on the form A.C. had marked places on her body where she sustained her injuries.

[5] If the prosecutor had asked the officer how the form described A.C.'s demeanor and trial counsel had objected on the ground of hearsay, the objection would have been properly overruled. Wade concedes that the business records exception applies to police reports unless the report contains an additional level of hearsay. Here, the description of A.C.'s demeanor at the time the report was filled out would have been written by the officer interviewing A.C., not A.C. Therefore, the description would fall within the business records exception.

¶31 Here, trial counsel's objection was on the ground of foundation. The trial court overruled that objection on the ground of foundation. The specific objection overruled is effective only to the extent of the ground specified. *See* ***Hoffman***, 240 Wis. at 152. Thus, the foundation objection as phrased did not give the trial court or the State an opportunity to correct any other potential error in admitting the evidence during the trial. Based on this record, we conclude that trial counsel forfeited any other objection to the admission of the domestic violence form and the officer's testimony regarding the contents of the form.

## III. We Do Not Address Wade's Claim that He Had the Right to Be Present during the Trial Court's Discussion of the Jury Question because He Raises It for the First Time on Appeal

¶32 Wade asserts that his right to be present was violated when the trial court addressed a jury question regarding exhibits outside of his presence. He maintains that trial counsel agreed to permit the jury to see the domestic violence supplemental form, which amounted to a reversal of trial counsel's previous objection to that exhibit going to the jury. Wade maintains it was unfair to deny him the right to be present because he could have reminded trial counsel of his previous objection or participated in a discussion of any change in strategy regarding that exhibit.

¶33 The problem with Wade's argument is that he raises it for the first time on appeal. We note that "[i]t is the often-repeated rule in this State that issues not raised or considered in the trial court will not be considered for the first time on appeal." ***State v. Bodoh***, 226 Wis. 2d 718, 737, 595 N.W.2d 330 (1999) (citation omitted). "Whether we address forfeited arguments is left to our

discretion." ***State v. Kaczmarski***, 2009 WI App 117, ¶9, 320 Wis. 2d 811, 772 N.W.2d 702.

¶34 Wade recognizes the general rule that this court will not consider an issue raised for the first time on appeal, and he does not dispute that he did not raise this issue before the trial court. However, he argues that this is a rule of judicial administration and, therefore, there is nothing preventing this court from considering the issue even though it was not raised in the trial court.

¶35 However, we see no compelling reason to ignore the forfeiture rule here. First, the State argued that Wade's absence when the trial court discussed exhibits being sent to the jury room was harmless. Wade did not respond to the State's argument and, therefore, concedes the issue. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (stating that failure to refute an argument constitutes a concession).

¶36 Second, as we explain later, we conclude that any error in admitting and sending the exhibit to the jury was harmless. When an erroneous admission of a report is harmless, any error in sending the report to the jury is also harmless. *See* ***Gibson v. State***, 55 Wis. 2d 110, 117-18, 197 N.W.2d 813 (1972).

¶37 Finally, "where the question raised for the first time on appeal involves factual elements … not brought to the attention of the lower court, this court on appeal will not generally decide such questions." ***Roseliep v. Herro***, 206 Wis. 256, 264, 239 N.W. 413 (1931). Here there are factual questions that would have to be addressed before this issue could be resolved. Although Wade asserts that trial counsel agreed to permit the jury to see the domestic violence supplemental form, the record does not establish what exhibits were sent to the

jury. "[I]t is incumbent upon trial counsel to make a proper record." *See* ***Simpson v. State***, 62 Wis. 2d 605, 610, 215 N.W.2d 435 (1974).

¶38 The note from the jury is not included in the record, and the transcript of the trial court's proceedings with counsel does not include a reading of the note or any description or list of the exhibits requested. Moreover, the record establishes that thirty-six exhibits were admitted into evidence during the trial. With the exception of the 911 calls exhibit, the record does not establish which twenty-six out of the thirty-six exhibits were requested and subsequently sent to the jury. The record is insufficient to establish whether the domestic violence supplemental form was included in the exhibits that the jury requested or that it was sent to the jury.

¶39 Additionally, there is a factual issue of whether Wade waived his right to be in the courtroom when the trial court addressed the jury question. In his argument, Wade omits the fact that in response to the trial court's question whether Wade was "on board with what we're doing here?," trial counsel not only said he did not have a chance to check with Wade, but he also stated "but I – from my discussions with him, that is consistent with his wishes." As Wade acknowledges, there are numerous unanswered questions, such as: (1) did Wade and trial counsel discuss Wade's right to be present in the courtroom if the jury asked to see any exhibits?, (2) did trial counsel immediately tell Wade about the jury question and how it was resolved?, and (3) what conversation did Wade and trial counsel have that led trial counsel to state that the resolution of the jury question was consistent with Wade's wishes?

¶40 For the reasons stated above, we conclude that this is not an appropriate case for departing from the general rule that issues not raised or considered in the trial court will not be considered for the first time on appeal.

## IV. Any Alleged Error regarding the Admission of the Officer's Testimony about What A.C. Told Her and the Information that A.C. Provided on Milwaukee Police Department Domestic Violence Supplemental Form Is Harmless Error

¶41 The erroneous admission of evidence is subject to the harmless error rule. ***State v. Britt***, 203 Wis. 2d 25, 41, 553 N.W.2d 528 (Ct. App. 1996). "[I]n order for an error to be deemed harmless, the party who benefited from the error must show that 'it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" ***State v. Martin***, 2012 WI 96, ¶45, 343 Wis. 2d 278, 816 N.W.2d 270 (citations omitted). The court went on to identify several non-exhaustive factors that assist courts in analyzing this issue:

> [W]hether an error is harmless: the frequency of the error; the importance of the erroneously admitted evidence; the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence; whether the erroneously admitted evidence duplicates untainted evidence; the nature of the defense; the nature of the State's case; and the overall strength of the State's case.

***Id***., ¶46. Here, we conclude that, if there was any error in admitting the evidence, the error was harmless.

¶42 Here, the alleged error was limited and cumulative of other evidence. Both pieces of hearsay evidence involved the officer's testimony about A.C.'s description of her injuries. The first involved the officer's testimony about what A.C. told the officer, and the second concerned the officer's testimony about

A.C.'s statements reflected in the domestic violence report regarding her injuries. Both pieces of evidence consisted of brief summaries of the injuries that were cumulative with A.C.'s own testimony.

¶43 The officer's testimony about what A.C. told the officer about her injuries spanned six lines in the trial transcript and consisted of a statement that Wade struck and kicked A.C. all over her body. The officer's testimony about A.C.'s statements in the domestic violence form spanned eight lines of the transcript and again consisted of broad statements that A.C.'s injuries were all over her body. By contrast, A.C.'s own testimony regarding her injuries was much more detailed. It spanned approximately twenty-one pages of trial transcript and included A.C.'s specific explanation of each injury as shown in twenty photographs depicting her injuries.

¶44 Moreover, the hearsay was duplicated by untainted evidence. The doctor who examined A.C. testified about what she told him about the incident—both what Wade did to her and the type of injuries she suffered. He specifically testified about the injuries described in the medical report. Wade does not challenge the admission of A.C.'s statements to the treating doctor.

¶45 Additionally, the State presented a strong case reflected in the evidence that corroborated A.C.'s testimony. First, as noted above, the doctor's testimony and medical report corroborate A.C.'s testimony. A police officer who was at the hospital testified that she saw redness on A.C.'s face and arm. The jury saw twenty photographs showing A.C.'s injuries. A.C. also showed the jury the scar on her left arm caused by Wade burning her with a cigarette. In his testimony, the doctor confirmed that the medical report referenced the scar on A.C.'s left arm and stated that the burn was consistent with a cigarette burn.

¶46 Second, the officer's testimony about the evidence in A.C.'s apartment corroborated her testimony. A.C. testified that Wade threw a candle holder full of cigarette butts at her while she was sitting on the living room floor. The officer testified that she saw and photographed a candle holder and nearby cigarette butts on the living room floor when she searched A.C.'s apartment. A.C. also testified that Wade hit her with a liquor bottle in the living room. The officer saw and photographed the liquor bottle sitting on a ledge in the living room.

¶47 Additionally, A.C.'s behavior after the incident was consistent with being a victim of Wade's assault and also supports her testimony. A grocery store employee testified that A.C. signaled for customers to call 911 and that she looked "extremely frightened." He also stated that after he and several customers confronted Wade, Wade began to drive away, and A.C. "rolled out" of the car and ran into the store. Moreover, A.C. testified that two days after the assault, she quit her job and moved to Florida, leaving most of her belongings in Milwaukee. She said she moved to get away from Wade. Further, the fact that she took a Greyhound bus from Florida back to Milwaukee to testify supports her credibility.

¶48 Wade's defense was, and remains, that A.C. was lying about the whole incident. He argues that the officer's testimony of what A.C. told her about what happened and her testimony about A.C.'s statements in the domestic violence report prejudiced him by contributing to the guilty verdict. In ***State v. Mainiero***, 189 Wis. 2d 80, 101-04, 525 N.W.2d 304 (Ct. App. 1994), this court addressed a similar claim. There, the trial court admitted the sexual assault victim's prior consistent statements to her mother. ***Id.*** at 101. This court found that the testimony by the mother was erroneously admitted. *See* ***id.*** However, addressing the issue of whether the admission of the testimony was harmless, this court stated that:

> The outcome of this case hinged on who the jury ultimately believed—[the defendant] or the complainant. [The defendant] argues that the admission of the complainant's prior statement to her mother "substantially bolstered the complainant's credibility." We disagree. The testimony in question was merely a brief summary of the complainant's allegations and not nearly as detailed as the complainant's direct testimony…. Therefore, we conclude that there is no reasonable possibility that the error contributed to [the defendant]'s sexual assault conviction.

*See* ***id.*** at 103-04.

¶49 Like the situation in ***Mainiero***, the testimony in question was merely a brief summary of A.C.'s allegations and not nearly as detailed as her direct testimony. *See* ***id.*** The frequency of any alleged error was limited, cumulative to A.C.'s detailed testimony, and duplicated by untainted evidence. Further, A.C.'s testimony was corroborated by the physical evidence found in her apartment, the photographs of her injuries, and what occurred at the grocery store.

¶50 We conclude that if the trial court erred in admitting the officer's testimony about what A.C. said Wade had done to her and A.C.'s statements reflected in the domestic abuse violence report, the error was harmless.

## CONCLUSION

¶51 For the reasons stated above, we conclude that: (1) Wade forfeited his hearsay objections to the officer's testimony regarding what A.C. told her occurred and the officer's testimony regarding A.C.'s statements reflected in the domestic violence form; (2) Wade forfeited his objection to not being present in the courtroom when the trial court and counsel addressed the jury question because he raised it for the first time on appeal; (3) if the trial court erred in admitting the hearsay testimony, the error is harmless; and (4) by failing to respond, Wade conceded the State's harmless error argument regarding his

absence from the courtroom when the trial court discussed which exhibits would be sent to the jury.

¶52 Based on those conclusions, we affirm the judgment of conviction.

*By the Court*.—Judgment affirmed.

Not recommended for publication in the official reports.