

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1431

September Term, 2014

MOHAMED MIDDLE

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Reed,

JJ.

Opinion by Graeff, J.

Filed: July 8, 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.

Mohamed Middle, appellant, was convicted by a jury in the Circuit Court for Montgomery County of stalking, harassment, malicious destruction of property, and two counts of violating a protective order. The court sentenced him to a total of three years' incarceration.¹

On appeal, appellant raises one issue for our review, which we have rephrased as follows:

Did the circuit court err in admitting the entirety of the Protective Order instead of admitting only the first page?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Fouzia Godfield testified that she married appellant in February 2005, and they lived together at 27 Crested Iris Court. In December 2012, Ms. Godfield and appellant separated. She obtained a Protective Order against appellant, which provided that, except as stated in the order, appellant “shall not” contact her “by any means.”

Despite the Protective Order, appellant called Ms. Godfield several times from an unknown number and left voicemails. He also sent her notes in October and November 2013. In October, he sent a note stating: “I want to destroy you,” with a drawing of a hand replicating the shape of a gun. In November, he sent notes written on a napkin and a torn, yellow sticky note. In December 2013, Ms. Godfield observed appellant watching her from

¹ The specific sentences imposed were as follows: five years, all but three suspended, on the stalking conviction; 90 days, consecutive, all suspended, on the harassment conviction; 60 days, consecutive, all suspended, on the malicious destruction of property conviction; and 90 days for each conviction of violation of a protective order, both consecutive and suspended.

a parked car after she had been grocery shopping in a nearby store. Because she feared for her safety, she called the police.

On the morning of December 5, 2013, a few days after she spoke with the police, Ms. Godfield noticed that the doorknob on the front of her house was dented, and there were scratches around it. When she went to her car, she discovered that the driver's side door was open, the driver's seat was "cut up," and there was a "huge knife and . . . a note that was tacked into that knife" stuck onto the driver's seat.² The note read:

Do you think you can not be reached! Or did you think that piece of shit! You got from court Will protect you! You took my children! You took my house! And then you FILED FOR DIVORCE!!!!!! I am a too proud Man to contest your stupid Divorce! But I can have any woman I want, my girlfriend Florence will be witched you... I AM A MUSLIM MAN IN THIS RELATIONSHIP! YOU DON'T GET TO VOTE HOW My life is going to be! Make no mistake I will have the last word!!!! And IF YOUR NOT MARRIED TO ME! YOU BETTER BE BARRIED BITCH!!!!!!] YOU GOT THAT!!!![]

Ms. Godfield immediately contacted the police.

Ms. Godfield subsequently took her car to be repaired. She also asked the repair company to check a strange noise and some wires that were hanging under the dashboard of her car, which she had noticed in November. The repair company found a foreign object that had been placed under Ms. Godfield's dashboard, and Ms. Godfield testified that the object was not there when she purchased the car.

² Appellant had a key to her car.

Brent Davis testified that the foreign object discovered in Ms. Godfield’s car was a GPS tracking device. He further testified that such a device is not usually present in a car like Ms. Godfield’s when it leaves the factory.

Diana Lawder, a forensic scientist with the Maryland State Police, testified as an expert for the State. She compared four of the handwritten notes that Ms. Godfield received against known samples of appellant’s handwriting, and she concluded that three were “virtually certain” to have been written by appellant. With respect to the fourth document, Ms. Lawder “found class characteristics, but that’s not enough to identify somebody.”

Anthony Wiggins testified that appellant worked for him at “A and W Assisted Living” beginning in September 2013. Appellant worked on a “three [day] on and four [day] off” schedule, where he would work alternating 12 hour shifts during a three day period, during which he was required to be on the premises at all times. Appellant had such a three day shift between December 3, and December 6, 2013. Mr. Wiggins saw appellant during that three day period, and he was not alerted that appellant left at any time.

As indicated, the jury found appellant guilty of stalking, harassment, malicious destruction of property, and two counts of violating a protective order. This appeal followed.

DISCUSSION

Appellant argues that the circuit court “abused its discretion when it admitted into evidence Ms. Godfield’s entire 2012 Protective Order against [him]—subject to only limited redactions.” He contends that the

only relevance of this Order was to show that a protective order between Ms. Godfield and [appellant] was in effect when [appellant] contacted Ms. Godfield, that [appellant] had been ordered not to contact Ms. Godfield by any means, and that [appellant] had been ordered not to abuse, threaten to abuse, or harass Ms. Godfield. All of this information appeared on the first page of the Protective Order, to which defense counsel did not object.

Appellant asserts that the court should have excluded the subsequent pages because they contained irrelevant and extremely prejudicial information. In that regard, he asserts that the court improperly admitted evidence that made him appear to be a threat to Ms. Godfield, including that: (1) appellant had been found by “clear and convincing evidence” to have assaulted Ms. Godfield; (2) appellant had been ordered to stay away from Ms. Godfield’s “undisclosed place of employment for reasons of safety”; and (3) appellant had been ordered to “surrender all firearms.”³

The State contends that the trial court properly exercised its discretion to admit the entire Protective Order, asserting that it was necessary to explain the specific actions that constituted violations. With respect to the mention of the assault charge, the State argues that “trial court properly exercised its discretion to admit the redacted description of [appellant’s] conduct that gave rise to the Protective Order, whose relevance outweighed any undue prejudice.”

³ Appellant also appears to suggest that the court erred in admitting the subsequent pages because they contained irrelevant information indicating that Ms. Godfield was awarded possession of the home, that appellant was ordered to vacate the home, that appellant was not permitted to enter the home, that Ms. Godfield was awarded possession of the car, and that Ms. Godfield was awarded custody of the parties’ children. He does not allege, however, that he was prejudiced by the admission of this information.

A.

Proceedings Below

The first page of the Protective Order, entered on December 20, 2012, and effective until December 20, 2013, stated that appellant “SHALL NOT abuse, threaten to abuse, and/or harass the Protected Parties,” and “SHALL NOT contact Protected Parties by any means, except as stated in this Order. Additional terms of the Order are as set forth in this document.”⁴

The second page of the Protective Order stated:

C. There is clear and convincing evidence to believe that the Respondent committed the following act(s) of abuse:

Placed Person Eligible for relief in fear of imminent serious bodily harm

Assault in any degree

On 12/10/2012 RESPONDENT BECAME VERY ANGRY, HE PUT BOTH OF HIS HANDS AROUND PETITIONER’S NECK AND [CHOKED] HER. HE THREATENED PETITIONER.

Based on the finding that appellant had abused Ms. Godfield, the court ordered the following relief:

2. That the Respondent SHALL NOT abuse, threaten to abuse, and/or harass FOUZIA GODFIELD.

3. That the Respondent SHALL NOT contact (in person, by telephone, in writing, or by any other means) or attempt to contact FOUZIA GODFIELD.

4. That the Respondent SHALL NOT enter the residence of FOUZIA GODFIELD at 27 CRESTED IRIS COURT, MONTGOMERY VILLAGE,

⁴ As noted on the first page of the Protective Order, Ms. Godfield is the protected party referred to throughout the Order.

MD, 20886 or wherever the protected party(ies) resides. (Residence includes yard, grounds, outbuildings, and common areas surrounding the dwelling.)

5. That the Respondent SHALL STAY AWAY from
The following place(s) of employment:
An undisclosed place of employment for reasons of safety.
6. That the Respondent SHALL VACATE the home immediately (home includes yard, grounds, outbuildings, and common areas surrounding the dwelling) at 27 CRESTED IRIS COURT, MONTGOMERY VILLAGE, MD, 20886 and remain away. Use and possession of the home is granted to FOUZIA GODFIELD.
7. That custody of [the MIDDLE children] is awarded to PETITIONER.
8. Visitation with [the MIDDLE children] is granted to RESPONDENT
PETITIONER IS GRANTED REASONABLE VISITATION RIGHTS
WITH THE [] CHILDREN
9. That exclusive use and possession of the vehicle described as USE
AND POSSESSION OF THE FAMILY 2008 HYUNDAI is granted to
PETITIONER.
10. That the Respondent SHALL immediately surrender all firearm(s) to law
enforcement agency MONTGOMERY COUNTY SHERIFF'S DEPT, and
to refrain from possession of any firearm, for the duration of this Order.

Comments:

PETITIONER IS GRANTED TEMPORARY USE AND POSSESSION OF
THE HOME.

RESPONDENT IS PERMITTED TO HAVE LIMITED CONTACT WITH
PETITIONER EXCEPT AS RELATES TO THE CHILDREN, AND
SHALL BE THROUGH TEXT OR PHONE.

When the State attempted to enter the Protective Order into evidence, counsel for
appellant objected. At a bench conference, the following colloquy occurred:

[DEFENSE COUNSEL]: This is the final protective order and it's valid until
December 20th, 2013. The second page has very prejudicial information
about [unintelligible] if necessary. I'm not going to object to the fact that
there's a protective order, and it's –

[THE COURT]: Okay, I'm sorry –

[DEFENSE COUNSEL]: I think this first page is sufficient, [Y]our [H]onor.

[THE COURT]: You're objecting to the first page?

[DEFENSE COUNSEL]: No, I only want the first page to come in. I think it's sufficient, it says final protective order, his name, her name, and the date.

[PROSECUTOR]: Well, the second page has all of the conditions of the protective order.

[DEFENSE COUNSEL]: I will stipulate that those were the conditions. I don't think it's important that's he's choking.

[PROSECUTOR]: We can redact the part of the finding. We can admit for now and fix it later, that's fine, but I don't think that's necessary.

[THE COURT]: Okay. Is this what's being offered, this –

[PROSECUTOR]: Yes.

[THE COURT]: -- single document?

[PROSECUTOR]: Yes.

[THE COURT]: Okay, I'll overrule the objection and admit No. 3.

[DEFENSE COUNSEL]: Your, [H]onor, in the second page it says that he choked her. I can't – it's – I can't verify it, I –

[THE COURT]: Okay.

[DEFENSE COUNSEL]: I think that that needs to come out. I mean –

[THE COURT]: Isn't that the basis for the order?

[DEFENSE COUNSEL]: Yes, but the basis is not relevant, just the fact that one exists and whether or not he violated it is –

[THE COURT]: Okay.

[DEFENSE COUNSEL]: -- what's relevant. I mean, I think even [the prosecutor] would agree that it should not be coming in.

[THE COURT]: Okay, then we can – you can – we can simply black through that sentence under c.

[DEFENSE COUNSEL]: So, can we admit it at this time, but not publish it, and then we'll fix it before it goes back to the jury?

[THE COURT]: Okay.

[DEFENSE COUNSEL]: Okay.

At the end of the first day of trial, the court took up the issue of redactions. Defense counsel again stated that she was “fine with the first page coming in,” but she asked “that the second page be completely gone.” She contended that, if the court was going to let that page in, she wanted it to be redacted to exclude specific information, including information in paragraphs seven and eight regarding custody and visitation of the children. The following then occurred:

[THE COURT]: All right. Any problem with eliminating paragraph seven and eight, which deal with custody of the children and visitation?

[PROSECUTOR]: Well, [Y]our [H]onor, I think the completeness of the document is important to the jurors because it lends authenticity; it lends the officialness of it. If we're taking out everything they don't get the complete document, and they don't see, in my opinion, the seriousness of what this order was.

[THE COURT]: Okay. Let me see the document.

[DEFENSE COUNSEL]: Of course, [Y]our [H]onor. Again, I'm happy to stipulate that there is a document. I think everything is covered by page one. And to say they're not going to understand the seriousness of it, it's a crime, and the court order would be coming in. I don't want to backdoor other prejudicial information about Mr. Middle.

[PROSECUTOR]: In terms of the custody of the children, I believe that Ms. Godfield did testify to that. She testified that the defendant vacated the home in December 2012, that she had use of the car since December 2012 –

[DEFENSE COUNSEL]: That's true –

[PROSECUTOR]: She said she was the only person who the children lived with since December 2012. This isn't information that the jury hasn't heard before and that the [S]tate is attempting to backdoor. This is – it's all part of the same document, and it needs to come in as part of that document. That being said, there's not been any information and shouldn't be any information about an assault. The [S]tate has no problem with, I believe, it's section c being redacted. But if we're redacting the whole thing it just takes away from the authenticity of the document.

[DEFENSE COUNSEL]: I'm not going to challenge the authenticity of the document in any way in my closing argument, and I think the only important things are that he's not to contact her, attempt to contact her, abuse her, or threaten to abuse her, and those should be what's included. I did hear Ms. Godfield mention the children's situation, and I strategically did not object because I was hoping it would just go under the radar. I did not think it was relevant. I didn't want to draw attention to it. I thought that was the best thing strategically for my client. I heard it. I think it's objectionable. It's certainly not prejudicial and not relevant. It has nothing to do with the children, but that's what I decided to do strategy wise. So, to reinforce it by having it in writing by the court, I think, is prejudicial.

[THE COURT]: Okay. So what I'll do is, I think that it would be appropriate to remove under c the description that starts[:] “On December 12, 2012, respondent became very angry,” et cetera. That sentence, we'll remove that. Then it seems to me that number seven, eight, and the comment section all sort of go together because seven says the custody of the children is awarded to the petitioner, eight sets forth the visitation, and in the comment section [it says[:] “Respondent is permitted to have limited contact with petitioner except as it relates to the children and shall be through text or phone.[”] So, those three all seem to me to go together. So, either it seems to me they should all remain or they should all be removed.

[DEFENSE COUNSEL]: I would ask that they all be removed.

[THE COURT]: Okay. So, because none of the violations deal with the children, I'll go ahead and we'll delete eight, nine, and the comment that indicates[:] “Respondent is permitted to have limited contact with petitioner

as it relates to the children and shall be through text or phone.” So, we’ll remove that section under c. We’ll remove seven, eight, and the second sentence under the comments.

All right. What else?

[DEFENSE COUNSEL]: Your [H]onor, the –

[THE COURT]: So, for the purposes of record, we’ll keep No. 2, the original, as marked, and then we’ll just do a marked up copy and maybe mark that as 2A and submit that to the jury. So, we can keep the original document in its original form, and then we’ll use one that we’ll submit to the jury.

[PROSECUTOR]: So it was sections seven, eight, nine –

[THE COURT]: Seven, eight, not nine – seven, eight, and then the second sentence under the comment section.

[PROSECUTOR]: And section c as well.

[THE COURT]: And the sentence under section c that begins[:] “On December 10, 2012 respondent became very angry.”

The Protective Order subsequently was published to the jury with the following information redacted: the description of the assault under Section C; Section 8; Section 9; and the second and third sentences of the comment section.⁵

B.

Standard of Review

Maryland Rule 5-403 provides, in pertinent part, that, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” The determination to admit or exclude evidence under rule 5-403 is “left

⁵ It appears that Section 9 was redacted instead of Section 7. Counsel for appellant did not object to this, despite being given an opportunity to review the Protective Order.

to the sound discretion of the trial judge.” *Consol. Waste Indus. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *Malik v. State*, 152 Md. App. 305, 324 (2003)). As the Court of Appeals has explained:

When weighing the probative value of proffered evidence against its potentially prejudicial nature, an abuse of discretion in the ruling may be found “where no reasonable person would share the view taken by the trial judge.” *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). That is to say, an abuse of discretion occurs when a decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *King v. State*, 407 Md. 682, 711 (2009) (internal quotation marks and citation omitted). Thus, “a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.” *Id.* (internal quotation marks and citation omitted). “Whether there has been an abuse of discretion depends on the particular circumstances of each individual case.” *Pantazes v. State*, 376 Md. 661, 681 (2003).

Id.

C.

Terms of Protective Order

We agree with the State that the circuit court properly exercised its discretion in admitting more than the first page of the Protective Order because page two of the order helped to give the jury the full context of the order. Page one of the Protective Order stated that appellant “SHALL NOT abuse, threaten to abuse, and/or harass the Protected Parties,” “SHALL NOT contact Protected Parties by any means, except as stated in this Order,” and “Additional terms of the Order are as set forth in this document.” Given that language, the second page, which set forth the “[a]dditional terms” was relevant to give the jury context regarding the scope of the order.

Appellant contends, however, that the prejudicial value of the second page outweighed its probative value. In support, he cites to three items that he claims were unfairly prejudicial. Two of the items include terms of the Protective Order: (1) that appellant stay away from “[a]n undisclosed place of employment for reasons of safety”; and (2) that appellant “immediately surrender all firearms[s].”⁶

Appellant contends that these conditions indicated to the jury that the court that issued the Protective Order believed that he was a danger to Ms. Godfield, and therefore, the admission of these conditions was unfairly prejudicial. We disagree.

The first page of the “Protective” Order, to which appellant did not object, provides that appellant was not to contact Ms. Godfield in any way. This implies some threat to Ms. Godfield’s safety. Given that, the portion of the second page citing a danger to safety at Ms. Godfield’s place of employment was not unduly prejudicial.

With respect to the condition regarding firearms, the first page of the Protective Order noted that, under both Maryland and Federal law, a person may not possess a firearm while subject to a protective order. Given that, there is no basis for the argument that admission of the portion of the order stating that appellant was required to surrender any firearms was unduly prejudicial. We hold that the circuit court did not abuse its discretion in admitting the terms of the Protective Order contained on page two of the order.

⁶ The State contends that appellant’s contention in this regard is waived because he did not ask the court to redact these specific sections. We disagree. Counsel clearly stated that she objected to the admission of any portion of the second page being admitted into evidence because its prejudicial value outweighed its probative value. Counsel’s subsequent request to redact portions of the second page did not waive her primary contention.

D.

The Prior Assault

Appellant also contends that the circuit court erred in admitting the portion of Section C that contained a finding that he placed Ms. Godfield “in fear of imminent serious bodily harm” and committed an assault. For clarity, we set forth the redacted portion of the Protective Order in this regard, as follows:

C. There is clear and convincing evidence to believe that the Respondent committed the following act(s) of abuse:

Placed Person Eligible for relief in fear of imminent serious bodily harm
Assault in any degree

~~ON 12/10/2012 RESPONDENT BECAME VERY ANGRY, HE PUT BOTH OF HIS HANDS AROUND PETITIONER'S NECK AND CHOCKED [sic] HER. HE THREATENED PETITIONER.^[7]~~

Although the court redacted the description of the offense, appellant argues it should have redacted the information that he previously had assaulted Ms. Godfield and placed her in fear of serious bodily harm, asserting that this evidence had minimal probative value, which was outweighed by the prejudicial nature of the evidence. With respect to probative value, although, he concedes that this evidence “may have been relevant to whether his conduct between October and December would have alarmed or seriously annoyed Ms. Godfield, or whether it would reasonably have placed her in fear of serious bodily injury,” citing *Streater v. State*, 352 Md. 800, 815-16 (1999), he contends that, given the nature of the contact alleged, the “central question” facing the jury “was not the impact of the alleged conduct on Ms. Godfield, but rather whether [appellant] was responsible for that conduct.”

⁷ The stricken text is the text that was redacted.

He asserts that “the only way in which the findings in the Protective Order were probative as to whether [he] was responsible for the conduct here was through improper propensity reasoning.”

The State argues that the circuit court “properly exercised its discretion to admit this additional information as its probative value outweighed any undue prejudice.” It asserts that the reference to appellant’s actions against Ms. Godfield was admissible to demonstrate both that appellant committed the conduct alleged in this case and to establish the elements of each charged offense. It further argues that the evidence was not unduly prejudicial, as the first page of the Protective Order already indicated to the jury that appellant “had committed some act against [Ms.] Godfield that warranted a court order that he not abuse, harass or threaten her.”

As appellant admits in his brief, the substantive portions of the Protective Order had probative value. The Court of Appeals’ analysis in *Streater*, 352 Md. at 819 makes that clear. In that case, the defendant similarly was charged with, *inter alia*, stalking and harassment. *Id.* at 802-03. The Court stated that the substantive aspects of the Protective Order had probative value, stating:

The finding that [the defendant] committed acts which included threats that placed [the victim] in fear of imminent bodily harm carry probative value with respect to the stalking and harassment offenses in that they tend to show that [the victim] was in reasonable fear of serious bodily injury and that [the defendant] intended to harass her.

Id. at 819. With respect to the finding in the Protective Order that appellant had committed an assault or a battery, the Court of Appeals held that such a finding had “significant

probative value with respect to the intent and course of conduct elements of the stalking and harassment charges.” *Id.*

Although the Court in *Streater* reversed the conviction on the ground that the circuit court did not properly assess whether the evidence there constituted inadmissible other crimes evidence, no such claim is made in this case. At oral argument, counsel for appellant agreed that the only issue he raised below was whether the probative value of the order was significantly outweighed by its prejudicial value. Accordingly, that is the only issue before us. *See Correll v. State*, 215 Md. App. 483, 497 (2013) (“Ordinarily, a non-jurisdictional issue is not preserved for appellate review if it was not raised in or decided by the lower court.”) (citing Md. Rule 8-131(a)), *cert. denied*, 437 Md. 638 (2014).

Pursuant to *Streater*, it is clear in this case, where appellant also was charged with stalking and harassment, that the portion of the Protective Order referring to appellant’s assault of Ms. Godfield had significant probative value. Appellant’s prior actions placing Ms. Godfield in fear of imminent bodily harm and assaulting her were of significant probative value to the question whether appellant knew or reasonably should have known that his actions would alarm Ms. Godfield and place her in reasonable fear of bodily injury.⁸

⁸ Md. Code Ann. (2012 Repl. Vol.) § 3-802(a) of the Criminal Law Article (“CL”) defines stalking as follows:

In this section, “stalking” means a malicious course of conduct that includes approaching or pursuing another where the person intends to (continued . . .) (. . . continued) place or knows or reasonably should have known the conduct would place another in reasonable fear:

- (1) (i) of serious bodily injury;
- (ii) of an assault in any degree;

(continued...)

Moreover, a prior assault of a victim is relevant to demonstrating the course of conduct that must be shown to satisfy the elements of stalking. *See Hackley v. State*, 161 Md. App. 1, 20, *aff'd*, 389 Md. 387 (2005). Accordingly, we hold that the portion of the Protective Order that referred to an assault committed by appellant was highly probative to two separate offenses with which appellant was charged.

Moreover, we are not persuaded that this portion of the Protective Order was “unfairly” prejudicial. Evidence is unfairly prejudicial when “it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged.” *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). Here, the jury knew, based on the issuance of the Protective Order, that appellant had taken some action that justified the order. We cannot conclude that the circuit court abused its discretion in concluding that the prejudice in the

(...continued)

- (iii) of rape or sexual offense as defined by §§ 3-303 through 3-308 of this title or attempted rape or sexual offense in any degree;
- (iv) of false imprisonment; or
- (v) of death.

CL § 3-803(a) defines the crime of harassment as follows:

A person may not follow another in or about a public place or maliciously engage in a course of conduct that alarms or seriously annoys the other:

- (1) with the intent to harass, alarm, or annoy the other;
- (2) after receiving a reasonable warning or request to stop by or on behalf of the other; and
- (3) without a legal purpose.

admission of the evidence that appellant had assaulted the victim did not outweigh the probative value of the evidence. Appellant states no claim for reversal in this regard.

**JUDGMENTS OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**