UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0556

September Term, 2015

KARL EDWARD STULL

v.

STATE OF MARYLAND

Krauser, C.J.,
Reed,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 6, 2016

Following a jury trial in the Circuit Court for Caroline County, appellant, Karl Edward Stull, was convicted of first-degree, third-degree, and fourth-degree burglary, and conspiracy to commit first-degree, third-degree, and fourth-degree burglary.[1]

In his appeal, Stull presents a single question for our consideration, which, as slightly edited, is:

> Did the trial court err in permitting testimony that, six months after the charged offense occurred, appellant had been apprehended in connection with a burglary in another county?

Finding neither error nor abuse of discretion, we shall affirm the judgments of the trial court.

FACTS and LEGAL PROCEEDINGS

Because Stull raises only an evidentiary question and offers no challenge to the sufficiency of the evidence, and because we assume the parties to be conversant with the underlying facts, we shall provide only a summary of the offenses and Stull's criminal agency. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

On January 28, 2013, Erin Thornton's house on Pealiquor Road in Caroline County was burglarized while she was at work. Later, in June 2013, Stull and two others—Matthew Carr and Jeffrey Bachmann—were arrested following a traffic stop in Anne

[1] The jury acquitted Stull of theft of property with a value of $10,000-$100,000 and conspiracy to commit theft of property with a value of $10,000-$100,000.

Stull was sentenced to concurrent 17 year and six months sentences for the first-degree burglary and conspiracy to commit first-degree burglary convictions. The remaining convictions were merged for sentencing purposes. The total executed sentence was 17 years and six months.

Arundel County. As a result of police interviews with Bachmann and with others unrelated to the instant case, Stull was considered a suspect in the Thornton offense, as well as other burglaries in other counties, and was ultimately charged.

Trial

Stull chose to testify. Presumably to take the sting out of his impeachable offenses, he immediately admitted to a criminal past that included thefts and burglaries dating from 1990 through 2013.

Prior to June 2013, he said, he had "gotten into some legal issues with a [drug] distribution" and therefore was left with no money or truck, which left him "frantic" because he required the truck to buy and sell four-wheelers, his only source of income. Needing money, he agreed to be a driver during a burglary committed by Bachmann and Carr in Anne Arundel County on June 11, 2013. He claimed that Bachmann apologized for implicating him in the January 2013 Thornton burglary but that the only way Bachmann saw out of his own trouble was to give the police a name. Stull denied any involvement in, or knowledge of, the Thornton burglary, or any burglary with Bachmann prior to June 11, 2013.

DISCUSSION

Stull contends that the trial court erred when it permitted Detective Jonathan Hardesty to testify that approximately six months after the burglary at Thornton's house, Stull had been apprehended in connection with a burglary in Anne Arundel County. In his view, evidence of the Anne Arundel County burglary comprised unduly prejudicial and

impermissible other crimes evidence disguised as corroboration of co-conspirator Bachmann's testimony.

Hardesty, whose testimony immediately followed that of Bachmann, related the details of the June 11, 2013 traffic stop that resulted from a "be on the lookout" for a particular vehicle following a burglary in Anne Arundel County. He described Stull's flight, and quick apprehension, from the scene of the stop.

The prosecutor asked to approach the bench, where the following colloquy occurred:

> [PROSECUTOR]: Your Honor I'm going to request permission to inquire of Detective Hardesty about the investigation that they conducted on that day that would involve a burglary that was conducted in Anne Arundel involving the Defendant and Mr. Bachmann working together. I understand that would be prejudicial to the Defendant but I don't believe the probative value. . . I think. . .I believe the probative value far outweighs the prejudicial value especially because we are considering a conspiracy to commit first degree burglary. And while we have presented one of the co-defendants. . .one of the co-conspirators, the State would need to present some sort of corroboration to that conspiracy. And I believe showing a prior event, a post event where they had worked in concert together with the evidence of that.
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> [DEFENSE COUNSEL]: Your Honor I will object[. M]y colleague has said it is a post event, I believe had this been a prior event even closer in time, but lack of that I believe it's [sic] effect is prejudicial.
>
> THE COURT: So obviously testimony of this sort would be prejudicial. The question is whether the probative value. . .
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> [DEFENSE COUNSEL]: Right.
>
> THE COURT: . . .is outweighed by. . .out weighs [sic] the prejudice, and to the extent that it does show a relationship, the Court finds that to the extent ah, that he is not identified as. . .he's identified as a co-conspirator and not acting, the person who actually committed burglary, I believe it would be probative to allow the State to corroborate his participation in this fashion. So your objection is on the record.

The prosecutor then elicited details from Hardesty about the nature of the Anne Arundel County burglary, including the fact that the homeowner had observed three suspects leave the scene in a white Ford Expedition shortly before Stull, Bachmann, and Carr were stopped in a vehicle matching that description.

Noting that the detective's testimony was "offered to show participation in the crime before the Court," the court queried whether the defense desired a limiting instruction. Defense counsel responded in the affirmative, and the court immediately instructed the jury:

> Now ladies and gentlemen as to Detective Hardesty's testimony I instruct you that Mr. Stull is not on trial here with regard to any events that may have occurred in Anne Arundel County. The Court has allowed you to hear Detective Hardesty's testimony with regard to that incident for the sole purpose of allowing you to consider it as corroborating testimony as to what Mr. Bachmann testified to here today. And that is the only purpose for which you can use it in your deliberation as to the charges in this case.

Defense counsel declared himself satisfied with the limiting instruction as given.

Initially, although the State does not raise a preservation issue, we conclude that appellant has failed to preserve this issue for our review.[2] When defense counsel objected to the introduction of Hardesty's testimony regarding another crime, the stated reason was that the other crime occurred after, rather than before, the one for which Stull was on trial. This specific objection bears no resemblance to the argument Stull raises on appeal—that

[2]In a footnote, the State points out that appellant's objection at trial—that the other crimes evidence should be excluded because it concerned an event that occurred after, instead of before, the charged offense—is "legally unsupportable and, perhaps for that reason, no longer championed on appeal." Nonetheless, the State asserts no preservation argument.

evidence of the later crime has no special relevance to the one for which appellant was then on trial, particularly because it did not prove that he and Bachmann had engaged in a common scheme or plan.

As this Court explained in *Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014):

> It is well established that "a contemporaneous general objection to the admission of evidence ordinarily preserves for appellate review all grounds which may exist for the inadmissibility of the evidence." *Boyd v. State,* 399 Md. 457, 476, 924 A.2d 1112 (2007). "An objection loses its status as a general one where a rule requires the ground to be stated, where the trial court requests that the ground be stated, and *where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence.*" *DeLeon v. State,* 407 Md. 16, 25, 962 A.2d 383 (2008) (internal quotation and citation omitted) (emphasis in original). Unlike a general objection, "when [specific] grounds [for an objection] are articulated, appellate review 'is limited to the ground assigned.'" *Addison v. State,* 188 Md. App. 165, 176, 981 A.2d 698 (2009) (quoting *Colvin–el v. State,* 332 Md. 144, 169, 630 A.2d 725 (1993)).

By voluntarily offering, as the basis for his objection, evidence of the timing of the other crime sought to be entered into evidence, Stull cannot be said to have made a general objection that would have preserved all grounds for appellate review. He is therefore limited to the ground he explicitly raised in the trial court, and, accordingly, the issue he presents in his brief is not properly before us. *DeLeon*, 407 Md. at 25.

Even were we to consider Stull's specific argument, he would not prevail.

The trial court's evidentiary ruling on the admissibility of Hardesty's testimony regarding Stull's apparent participation in another burglary with Bachmann in June 2013 implicates Maryland Rule 5-404(b), which provides:

> (b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, §3-8A-01 is not admissible to prove the character of a person in order to show action

> in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.[3]

Evidence of other crimes, offered for the purpose of proving a defendant's criminal propensity, is inadmissible. *Snyder v. State*, 361 Md. 580, 602 (2000). Rule 5-404(b) prevents the jury from "'developing a predisposition of guilt' based on unrelated conduct of the defendant." *Smith v. State,* 218 Md. App. 689, 709 (2014) (quoting *Sinclair v. State,* 214 Md. App. 309, 334 (2013) (in turn quoting *State v. Faulkner*, 314 Md. 630, 633 (1989)) (some quotation marks omitted). If, however, the otherwise excludable other crimes, wrongs, or acts evidence has "special relevance," *i.e*., it is substantially relevant to some contested issue in the case and not offered simply to prove criminal character, it may be admissible. *Wagner v. State*, 213 Md. App. 419, 458 (2013)(citing *Hurst v. State*, 400 Md. 397, 407 (2007)).

Relevant evidence "is not made inadmissible by reason of the fact that it tends to prove the defendant guilty of a crime other than the one for which he is indicted. Such evidence is not admitted because it is proof of another crime, but because of its relevancy of the charge upon trial." *Jones v. State*, 182 Md. 653, 656 (1944). If relevant, such evidence is admissible unless its probative value is substantially outweighed by potential jury hostility or unfair prejudice to the defendant. *Faulkner*, 314 Md. at 641. The admission of other crimes evidence is vested within the sound discretion of the trial court,

[3] The list of "other purposes" in the Rule is not intended to be exhaustive. *Jackson v. State*, 132 Md. App. 467, 484 (2000).

and we will not overrule the decision of the trial court unless there has been an abuse of discretion. *Snyder v. State*, 210 Md. App. 370, 393, *cert. denied*, 432 Md. 470 (2013).

A trial court may admit evidence of other crimes committed by a defendant if it satisfies three requirements. First, the evidence must be "substantially relevant to some contested issue in the case," such as motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident. *Gutierrez v. State*, 423 Md. 476, 489-90 (2011). The determination of whether evidence has special relevance is a legal determination that does not involve the exercise of discretion. *Wagner,* 213 Md. App. at 459.

Second, the evidence must be clear and convincing in establishing the defendant's involvement in the other crime or bad act. *Id*. In reviewing whether the other crime has been established by clear and convincing evidence, we look only to the legal question of whether there was "'some competent evidence, which, if believed, could persuade the fact finder as to the existence of the fact in issue.'" *Id*. (quoting *Henry v. State,* 184 Md. App. 146, 168–69 (2009)).

Finally, the court must determine that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Id*. We review the trial court's conclusion to admit or deny this evidence based on its probative value under an abuse of discretion standard. *Id*. Underlying this third prong of the test is the concern that "[p]rejudice may result from a jury's inclination to convict the defendant, not because it has found the defendant guilty of the charged crime beyond a reasonable doubt, but because

of the defendant's unsavory character or criminal disposition as illustrated by the other crimes evidence." *Streater v. State*, 352 Md. 800, 810 (1999).

In our review of the required three-step analysis in determining the admissibility of other crimes evidence, we conclude that the trial court properly admitted the evidence.[4] The court was first required to determine if the evidence fell within one of the exceptions listed in Rule 5–404(b), or otherwise had special relevance to some contested issue in the case. *Id.*

The State did not offer Detective Hardesty's testimony regarding Stull's apprehension following the June 2013 Anne Arundel County burglary as proof that he is a bad person guilty of other burglaries. Rather, the State presented the evidence in an effort to corroborate Bachmann's testimony, an alleged co-conspirator in the Thornton burglary, that Stull was involved as a lookout in the Thornton burglary.

Because inculpatory evidence provided by an accomplice must be corroborated, *In re Anthony W.*, 388 Md. 251, 263-64 (2005), the identification of Stull as a conspirator in another burglary with a similar *modus operandi* to (and involving at least one of the same confederates as) the Thornton's burglary was specially relevant. Aside from providing

[4] In this portion of our analysis, we assume, *arguendo*, that Hardesty's testimony amounted to other crimes evidence, although the detective merely recounted the fact that an Anne Arundel County homeowner reported a burglary by three individuals and provided the police with a vehicle description and a partial tag number. When a vehicle matching that description was located, Hardesty observed three individuals in the vehicle, one of whom was Stull, who fled the scene when the car was stopped. Hardesty did not opine that Stull had participated in the burglary, nor did he advise the jury that Stull had been arrested as a result. It was Stull himself who told the jury of his "criminal past," including the June 2013 burglary for which he had been convicted.

required corroboration of Bachmann's testimony, evidence that Stull participated in a subsequent three-person burglary similar to the Thornton offense fell within the "identity" exception to Rule 5–404(b). *See Faulkner,* 314 Md. at 637-38 (Evidence of other offenses may be received under the identity exception if it shows that the defendant was a member of an organization whose purpose was to commit crimes similar to the one on trial or that the defendant had on another occasion used the same confederate as was used by the perpetrator of the present crime). As such, the trial court properly determined that Hardesty's testimony had special relevance to contested issues in the case.

Second, after determining that the evidence fell within an exception to the ban on the use of other crimes evidence, the trial court was required to find that Stull's prior crimes were established by clear and convincing evidence. *Wagner*, 213 Md. App. at 459. In conducting a review of the trial court's decision, we look """only at the legal question of whether there was some competent evidence which, if believed, could persuade the fact finder as to the existence of the fact in issue."""" *Id.* (quoting *Henry v. State,* 184 Md. App. 146, 168–69 (2009), in turn quoting *Emory v. State,* 101 Md. App. 585, 622 (1994)). Because the evidence of his other crime was admitted by Stull himself, his testimony provided competent evidence of the fact sufficient to persuade the jurors.

Finally, the trial court was required to weigh the necessity for, and probative value of, the other crimes evidence against any undue prejudice likely to result from its admission. *Id.* The trial court's conclusion to admit or deny this evidence based on its probative value is reviewed under an abuse of discretion standard. *Id*. It was the State's burden to offer corroboration of Bachmann's inculpatory statements to prove that Stull

conspired in the Thornton burglary. In that regard, the trial court properly determined that evidence of Stull's conspiracy with Bachmann on a later, similar burglary was not unfairly prejudicial when weighed against its probative value. The trial court did not abuse its discretion in admitting that evidence.

Even were we to conclude that the trial court abused its discretion in admitting Hardesty's testimony, any such error would be harmless. *Dorsey v. State*, 276 Md. 638, 659 (1976) (Error is harmless if "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."). Hardesty provided some information about another crime committed by Stull, but Corporal Jean Davenport also testified, without objection, that Stull was developed as a suspect in the Thornton burglary, along with Bachmann and David Beyer, following his arrest for the June 2013 burglary.[5] Indeed, appellant himself filled in the specific details of his participation in, and arrest for, the June 2013 crime. Testifying in his defense, he also admitted to numerous prior burglaries and thefts as impeachable offenses.

Other trial testimony established the facts that Stull's house abutted Thornton's and that her house was visible from his home, which provided him the opportunity to know when Thornton might not be home. Further, Stull testified that in January 2013, he had no job, which arguably provided a motive for an experienced burglar.

[5] Corporal Davenport, of the Maryland State Police, interviewed Bachmann and Beyer in connection with similar Baltimore County burglaries.

In addition, the court gave a limiting instruction to the jury, advising it could only consider Hardesty's testimony "as corroborating testimony as to what Mr. Bachmann testified to here today. And that is the only purpose for which you can use it in your deliberation as to the charges in this case." Moreover, prior to closing arguments, the court instructed the jury that the evidence that Stull committed a burglary in Anne Arundel County was not to be considered "as evidence that [Stull] is of bad character or has a tendency to commit crimes." In the absence of contrary evidence, we presume that the jury followed the court's instructions. *Dillard v. State*, 415 Md. 445, 465 (2010).

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.