

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0892

September Term, 2015

MICHAEL JARED ROBINSON

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 26, 2016

*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.

On July 3, 2014, Michael Jared Robinson, appellant, was stopped by an officer of the Talbot County Sheriff's Office, after the officer observed Robinson's failure to stop the vehicle he was driving at a stop sign. Following a jury trial in the Circuit Court for Talbot County on July 1, 2015, Robinson was convicted on charges of driving on a revoked license, driving on a suspended license, and failure to stop at a stop sign. The court sentenced Robinson to serve a period of incarceration of two years, all but four months suspended, for driving while suspended; a concurrent one year, all but four months suspended, for driving while revoked; and to pay a \$25.00 fine, suspended, for failure to stop at a stop sign.

In his timely filed appeal, Robinson raises a single question for our review:

Did the trial court err in permitting the State to introduce Appellant's conviction for driving while suspended under Md. Rule 5-404(b)?

Discerning neither error nor abuse of discretion, we shall affirm the judgments of the circuit court.

DISCUSSION

Prior to Robinson's trial, the State moved, pursuant to Md. Rule 5-404(b), to introduce evidence that, on March 26, 2014, Robinson had pled guilty in Anne Arundel County to driving while suspended on September 15, 2013. The State sought to introduce Robinson's prior conviction to prove that when he was pulled over on July 3, 2014, he had knowledge that his driving privileges had been suspended and that he had not addressed the problem that caused the suspension. The State argued that the prior conviction was relevant to prove knowledge or lack of mistake, was established by clear

and convincing evidence in the form of a certified court record, and was “extremely probative” because it went to an “essential element” of the charges against Robinson.

Defense counsel argued that Md. Rule 5-404(b) applied only to other crimes, wrongs, or acts, and that convictions should not be included because the admission of evidence regarding prior convictions would be highly prejudicial. Defense counsel suggested that, in lieu of admitting evidence of Robinson’s prior conviction, the State be permitted to call the police officer who had stopped Robinson on September 15, 2013, and informed him that his driver’s license was suspended.

The circuit court concluded that evidence of Robinson’s prior conviction was admissible under Md. Rule 5-404(b), stating:

Well I look at the phrasing, [Md.] 5-404(b), where it says, crimes, wrongs or acts. Where it says crimes I think a conviction is implicit. For there to have been a crime there must be a conviction. Without a conviction I think you’re falling into the category of wrongs or other acts so therefore I think crimes falls, a conviction falls within as we get to the second sentence, such evidence may be admissible to prove knowledge and in the context of this case, charges and his admission in open court that he was, had driven while suspended proves knowledge. Not proves it, is substantial evidence of knowledge. Proof is up to the jury. So therefore I will allow the admission of this evidence.

During Robinson’s trial, the prosecutor moved “to admit State’s Exhibit 2, which is the certified record of the Defendant’s guilty plea on March the 26th of 2014 and guilty disposition to driving while suspended.” Defense counsel objected incorporating “all the reasons stated prior to today.” The circuit court then admitted the exhibit.

In closing argument, defense counsel’s primary argument was that Robison “did not know he was suspended” at the time of the charged offenses.” He suggested, “[t]he

question here is whether or not he knew, and I would suggest to you that there is nothing here today that gets you beyond that reasonable doubt hurdle that will allow you to believe beyond a reasonable doubt that he knew that he was driving suspended and revoked on that day and we'd ask that you find him not guilty.”

On appeal, Robinson contends that the circuit court's failure to exclude the evidence of his prior conviction was highly prejudicial and requires reversal.

Maryland Rule 5-404(b) provides:

Evidence of other crimes, wrongs, or acts including delinquent acts as defined by [Md.] Code [(1973, 2013 Repl. Vol.)], Courts [& Judicial Proceedings] 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.

Before evidence of prior bad acts or crimes may be admitted pursuant to Md. Rule 5-404(b), the trial court must engage in a three-step analysis. *State v. Faulkner*, 314 Md. 630, 634-35 (1989). First, the court must decide whether the evidence falls within an exception to Md. Rule 5-404(b). *Id.* at 634. Second, the court must decide “whether the accused's involvement in the other crimes is established by clear and convincing evidence.” *Id.* Finally, the court must balance the necessity for, and the probative value of, the other crimes evidence against any undue prejudice likely to result from its admission. *Id.* at 635. We review *de novo* a court's determination regarding whether proffered “bad act” evidence falls within one of the exceptions described in Md. Rule 5-404(b). *Smith v. State*, 218 Md. App. 689, 710 (2014) (citations omitted). We then

examine for abuse of discretion the circuit court’s balancing of the probative value of and the need for the evidence against the likelihood of unfair prejudice accruing to the defendant as a result of its admission. *Id.* (citations omitted).

In this case, as the circuit court instructed the jury, in order to prove that Robinson was guilty of the offense of “driving with a suspended license,” the State had to prove that “the Defendant knew that his license or privilege to drive was suspended by the State of Maryland.” Similarly, in order to prove that Robinson was guilty of “driving while revoked,” the State had to prove that “the Defendant knew his license or privilege to drive was revoked by the State of Maryland.” The fact that Robinson had pled guilty to driving with a suspended license on March, 26, 2014, less than four months before he was pulled over in the instant case, certainly made it more likely that on July 3, 2014, Robinson was driving with full knowledge that his license was suspended. We conclude that the evidence of Robinson’s prior conviction was relevant to prove knowledge and absence of mistake, and therefore was admissible for a purpose other than to demonstrate propensity, as required by Md. Rule 5-404(b). The certified copy of the disposition in Robinson’s prior case was clear and convincing evidence of his involvement in the prior bad act. And we discern no abuse of discretion in the circuit court’s weighing of the probative value of the evidence versus its prejudicial effect. Although the evidence was certainly prejudicial, given how highly probative the evidence was of a hotly contested

element that was essential to proving Robinson’s guilt for two of the offenses with which he was charged, its introduction was not unfair.¹

Insofar as Robinson continues to assert that Md. Rule 5-404(b) does not contemplate the admission of a defendant’s prior convictions, we note that Maryland courts have previously advised that “[t]he list of exceptions provided in [Md. Rule 5-404(b)] is not ‘a laundry list of finite exceptions . . . but rather a representative list of examples’ of permissible uses of other crimes evidence.” *Burrall v. State*, 118 Md. App. 288, 297 (1997), *aff’d.*, 352 Md. 707 (1999) (quoting *Merzbacher v. State*, 346 Md. 391, 407 (1997)). Just as the list of possible uses for the evidence is not finite, neither, we conclude, is the list of evidence of “crimes, wrongs, or acts” that may be admitted. Neither the plain language of the Rule nor any Maryland case excludes evidence of prior convictions from the evidence that is admissible under Md. Rule 5-404(b).

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

¹ Though the State certainly had the option of introducing the testimony of the Anne Arundel County police officer, who had previously cited Robinson for driving while suspended in order to prove that Robinson had knowledge of the status of his driver’s license at the time he was pulled over in the instant case, it was not required to use a method of proof that was preferred by the defense to prove its case. Parties are permitted to make strategic and tactical decisions regarding how to present the evidence in a case.