Circuit Court for Charles County
Case No. 08-K-16-000227

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2296

September Term, 2016

STEPHEN EUGENE PAYSINGER

v.

STATE OF MARYLAND

Friedman,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.
Dissenting Opinion by Friedman, J.

Filed: December 6, 2017

Appellant Stephen Eugene Paysinger appeals from his convictions in the Circuit Court for Charles County for the offenses of aggravated animal cruelty, violation of a protective order, and four counts of second degree assault. He presents the following questions for our review:

> "1. Did the trial court err by permitting testimony that appellant was transported to the hospital for an emergency evaluation?
>
> 2. Did the trial court abuse its discretion by refusing to allow a defense witness to testify?
>
> 3. Is the evidence legally insufficient to sustain appellant's convictions?"

We shall hold that the trial court abused its discretion by refusing to allow a defense witness to testify at the trial. Accordingly, we shall reverse. As guidance in the event of a retrial, we address the remaining issues and hold that the court erred by permitting testimony that police transported appellant to the hospital for an emergency evaluation and that the evidence was sufficient to sustain appellant's convictions.

I.

The Grand Jury for Charles County indicted appellant with the offenses of six counts of assault in the second degree, one count of malicious destruction of property with a value less than $1,000, one count of aggravated animal cruelty, and one count of violating a protective order. He proceeded to trial before a jury on October 3, 2016. The jury returned verdicts of guilty on four counts of assault (for different victims), aggravated animal cruelty

related to the family dog, Ellie, and violation of a protective order issued by the District Court. The court imposed four terms of incarceration of ten years each for the four assault convictions, one term of incarceration of three years for the aggravated animal cruelty conviction, and one term of incarceration of ninety days for the violation of the protective order conviction, for a combined total of forty–three years and ninety days of incarceration for all six counts. The court suspended all but twenty–three years.

The following evidence was presented at trial: Sabrina Everett dated appellant for about four and one half years, and they purchased a home together, located at 4981 Diamond Oaks Court in Waldorf, Maryland. They lived there together, along with Ms. Everett's three children, Giovanni (aged 18), Jv.G. (aged 12), and Js.G. (aged 7), and their dog Ellie, who the family adopted around Christmas of 2015.

On February 24, 2016, following several confrontations with appellant, Ms. Everett went to the District Court and returned home to serve appellant with the protection order that stated that neither party may abuse the other. After receiving the order, appellant pushed Ms. Everett while she attempted to call the police. The police arrived and ordered appellant to leave the premises. Ms. Everett then left for work, finished her shift, picked up her sons, Jv.G. and Js.G., and returned home around six or seven p.m. Later that night, Ms. Everett left to pick up Giovanni from Giovanni's workplace. They returned around 10:00 p.m.

Ms. Everett testified that when she returned to the home, appellant pulled his car up behind hers in the driveway, got out, walked toward the house, and said, "I'm going to

show you all I don't give a 'f' . . . you all not going to like this." He opened the house door, grabbed and choked the dog, Ellie, and then walked into the kitchen and started stabbing Ellie with a knife. Ms. Everett and Giovanni followed appellant into the house. Ms. Everett activated the panic alarm on the house's alarm system. Appellant then threatened to kill the children. When appellant walked out of the house, Ms. Everett locked the doors and called the police. Then she took the children into the basement and locked the door behind them.

The police arrived and arrested appellant, but could find neither the dog nor the knife. Ms. Everett and the children left the home and went to stay with her parents. The next morning, Ms. Everett's father found the dog about two blocks away from the house with open lacerations on her neck and puncture wounds to her legs and chest. Ms. Everett and her father took the dog to the Sheriff's office to meet with an Animal Control officer who took pictures of the dog and then recommended a veterinarian to help treat her. Ms. Everett and her father took the dog to a veterinary hospital, where she had surgery to close the lacerations and the neck wound, the latter of which was closed with staples.

Appellant and Ms. Everett owned the home jointly. As problems arose in their relationship, each wanted possession of the house. Ms. Everett sought protective orders on February 14 and 24, 2016, requesting that the court bar appellant from entering the house. On February 24, 2016, the court held a hearing on Ms. Everett's protective order requesting appellant be ordered out of the home; the court denied her request, but issued a protective order that stated that neither party may abuse the other.

Giovanni testified at trial that she saw appellant choke the dog, stab her with a knife, and cut her throat. Ms. Everett's sons Jv.G. and Js.G. testified that they each saw appellant holding the dog by the collar, choking her, and stabbing her with the knife.

Charles County Police Officer Gregory Cook responded to Ms. Everett's call for help. He saw appellant at the home, bleeding from his left wrist. Appellant told him that Ms. Everett inflicted the wound, and Officer Cook called for an ambulance. Officer Joseph Sapienza arrived at the home around 10:15 p.m. and testified that he saw appellant bleeding from his wrist. After appellant refused treatment from the ambulance crew, Officer Sapienza took appellant to the hospital.

Officer Sapienza testified at trial, over appellant's objection, that he took appellant to the hospital for an emergency evaluation. The following examination took place:

> "[THE STATE]: Okay. And did EMS – did members of the Emergency Medical Services Division respond?
>
> [OFFICER SAPIENZA]: Yes.
>
> [THE STATE]: Okay. And did you see them treat him?
>
> [OFFICER SAPIENZA]: They attempted to give him treatment and he refused.
>
> [THE STATE]: Okay. And then what happened?
>
> [OFFICER SAPIENZA]: We were exiting the ambulance and then we – based on his injuries . . .
>
> [DEFENSE COUNSEL]: Objection, Your Honor. May we approach?
>
> THE COURT: Sure.

(WHEREUPON COUNSEL APPROACHED THE BENCH)

[DEFENSE COUNSEL]: Your Honor, again, I don't think it's relevant that he was emergency petitioned that night. It's—it's—it goes against—again there's a stigma against mental illness and suicide and I just—I don't see how it's relevant in the case after all the allegations.

[THE STATE]: And the state's position is certainly absolutely [it] is relevant because he was in a position where *he knew he did something really bad and he's cutting himself. It's consciousness of guilt. It shows his demeanor. It shows that he was trying to hurt himself because of the things that he did and he didn't want—he wanted to end it but that's something for the juror[s] to hear.*

[DEFENSE COUNSEL]: But the State can argue that to the jury. There's no need to go into EPing him.

[THE STATE]: Absolutely we need to . . .

THE COURT: Well, all—all you're going to say—we're not going to go into any detail beyond that that happened and he was taken there period. We don't need to go into any more details than that. You're not going to try to submit any documentation on that . . .

[THE STATE]: Right.

THE COURT: Okay.

(WHEREUPON COUNSEL LEFT THE BENCH.)

[THE STATE]: So once you saw those injuries where did you—what did you do?

[OFFICER SAPIENZA]: After we had attempted to get him treatment for EMS personnel?

[THE STATE]: Right.

> [OFFICER SAPIENZA]: We—I placed him in the back of my cruiser for—to take him to the hospital for an emergency evaluation.
>
> [THE STATE]: Okay, what does that mean[,] an emergency evaluation?
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: Overruled.
>
> [THE STATE]: Go ahead, you can answer it.
>
> [OFFICER SAPIENZA]: It's a person that we—we feel as though their behavior in front of us or statements of those around them have observed them as a danger to themselves with possible mental health issues.
>
> [THE STATE]: Okay. So, you actually took him to the hospital.
>
> [OFFICER SAPIENZA]: Yes."

Appellant testified at trial, first to the difficulties in his relationship with Ms. Everett and that the relationship ended in December 2015 or in the beginning of January 2016. Then, describing the events of February 24, he related that Ms. Everett served him with court papers seeking to have him removed from their home. After a physical altercation, he left about 7:00 p.m. and did not plan to return. He received text messages from Lamont Warren, Giovanni's father, containing threats and a photograph showing a man on appellant's bed in the basement of the home. Appellant decided to return to the house and, as he made his way through the kitchen to the basement (where he moved his things earlier in the day), Ms. Everett struck him with a knife, cutting his wrist. Appellant testified that

he grabbed his wrist and ran out of the house. He denied that he ever threatened Ms. Everett or her children and that he saw or harmed the dog that night.

Appellant's counsel wanted to call Ms. Farmer-Johnson as a defense witness. Counsel proffered that this witness would testify that "in her opinion Ms. Everett is not truthful," and that Ms. Farmer-Johnson, a real–estate agent, knew both appellant and Ms. Everett. She would testify that she spoke to both parties on the telephone and that she had several conversations with Ms. Everett. Based on these conversations, Ms. Farmer-Johnson was of the opinion that Ms. Everett was untruthful. Appellant's counsel related that in one of those conversations, Ms. Everett apologized to Ms. Farmer-Johnson "because she had been untruthful." The State objected to the witness testifying. The trial court precluded appellant from calling the witness, stating as follows:

> "I'm not going to allow it. It is not appropriate for this. As the gatekeeper I am going to say this is too far [a]field and it's not going to shed any light on this case or on Ms. Everett's credibility. So, I'm going to deny it."

As indicated above, the jury convicted appellant and the court imposed the sentence. This timely appeal followed.

II.

Before this Court, appellant presents three arguments: first, that the trial court erred in admitting evidence related to the emergency evaluation; second, that the trial court

abused its discretion by excluding Ms. Farmer-Johnson's testimony; and third, that the evidence was insufficient to support the convictions.

Appellant first argues that Officer Sapienza's testimony regarding the details about the emergency evaluation was irrelevant and that, under Maryland Rule 5-403, the prejudice significantly outweighed any probative value. The State's theory as to relevancy was that appellant injured himself out of consciousness of guilt. To support that theory, however, the State produced no evidence to show how appellant's wrist was injured, that the injury was self-inflicted, or that appellant intended to injure himself. Appellant argues that, assuming *arguendo* that the evidence was relevant, the evidence was substantially more prejudicial than probative. The only reasonable course for the trial court was to admit the testimony that appellant was bleeding from a wound on his wrist, that he refused medical treatment from the emergency medical service personnel, and that the police transported him to the hospital for treatment. Finally, appellant argues that this error was not harmless error because the prosecutor emphasized this testimony in closing argument, arguing that appellant "had cut his wrists" and that the officer told the jury that "we took him to the hospital because he was going to hurt himself."

Second, appellant argues that the trial court abused its discretion by refusing to allow the defense witness, Ms. Farmer-Johnson, to testify. Because Ms. Everett was the State's primary witness, and her testimony differed with appellant's testimony and version of the events, the jury was called upon to make a credibility determination between Ms. Everett and appellant. Appellant concludes that Ms. Farmer-Johnson was an important

witness for appellant, and the court's exclusion of the witness interfered with appellant's fundamental right to call witnesses on his behalf.

Appellant relies upon Rule 5-608(a), which states that "[i]n order to attack the credibility of a witness, a character witness may testify (A) that the witness has a reputation for untruthfulness, or (B) that, in the character witness's opinion, the witness is an untruthful person." The testimony called into question Ms. Everett's character trait for truthfulness through testimony that, in Ms. Farmer-Johnson's opinion based on her experience and conversations with Ms. Everett, Ms. Everett was an untruthful person.

Finally, appellant argues that the evidence was legally insufficient to sustain his convictions. As to the assaults, he argues that no other evidence corroborated Ms. Everett's testimony that appellant threatened to kill the children. As to the animal cruelty charges, appellant argues that, in the absence of any specific testimony about the extent of the injuries to the dog, the veterinary care required to treat the injuries, or the dog's recovery, the evidence was insufficient to sustain the conviction. As to violation of a protective order, appellant argues that the State failed to offer any evidence to show what the protective order required of appellant.

The State argues that the trial judge exercised his discretion properly in admitting testimony that police took appellant, who had slashes on his wrists, to the hospital for an emergency evaluation. The State maintains that the injuries were relevant and any error in admitting testimony as to the officer's response to those injuries was harmless.

Additionally, the State offered no testimony linking appellant either to suicide or mental illness, therefore there was no unfair prejudice against mental illness or suicide.

As to the excluded witness testimony, the State argues that Ms. Farmer-Johnson's testimony was irrelevant for purposes of Rule 5-608(a) and, to the extent that it might have had some "very slight relevance," its relevance would have been substantially outweighed by confusion of the issues and waste of time. The State argues that the witness's basis for any opinion as to truth and veracity was inadequate and that the defense proffer was insufficient because the defense never proffered "the lie." The State concludes that even if the defense proffer had been sufficient to demonstrate some minimal relevance, the trial judge had discretion to preclude the evidence because the danger of confusion of the issues and waste of time substantially outweighed the probative value of the testimony.

As to the sufficiency of evidence, the State argues that the evidence was sufficient for all six charges, and that, because appellant failed to argue any basis for insufficiency at the motion for judgment of acquittal, he waived the issue of sufficiency of the evidence on appeal. Moreover, appellant never presented his argument regarding corroboration or his argument for lack of testimony about the substance of the protective order to the trial court and, hence, they should not be considered by this Court on appeal. Below, at the motion for judgment of acquittal, appellant merely argued as follows:

> "[W]e'll just argue sufficiency for counts 1, 2, 3, 4, 5, 6 and 7. As to count 8 for animal cruelty . . . that statute requires permanent disfigurement, something of that nature. I don't think that's been testified to."

Because the arguments appellant makes before this Court were not stated with particularity before the trial court, they were not preserved for our review.

Assuming preservation, the State argues that the evidence was sufficient. First, corroboration of testimony is not required. Second, on appellant's argument as to the protective order, the record shows that the parties stipulated that appellant and Ms. Everett knew that the temporary protective order required both appellant and Ms. Everett to refrain from "abusing or threatening to abuse or harass each other." The parties' stipulation read as follows:

> "The State and the Defense have agreed that a temporary protective order was in place at the time of the dog incident. The temporary protective order required both parties to refrain from abusing or threatening to abuse or harass each other. And both parties knew of the order and its terms. These facts are not in dispute and should be considered proven."

The State reasons that the stipulation does, in fact, set out terms that the jury could have found were violated by appellant when he walked into the house, threatened to kill the children, and mauled the family dog with a knife. Finally, as to aggravated animal cruelty, the State argues that the evidence was sufficient to support the finding of guilty beyond a reasonable doubt.

III.

We address first the issue of whether the trial court abused its discretion by excluding the testimony of the defense witness, Ms. Farmer-Johnson, because we find that,

under the facts of this case, the trial court's exclusion of the witness's testimony constitutes reversible error. The right of a defendant in a criminal case to call witnesses is protected by the Compulsory Process Clause of the Sixth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment. *Redditt v. State,* 337 Md. 621, 634–35 (1995). Explaining this right, the United States Supreme Court stated as follows:

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law."

Washington v. Texas, 388 U.S. 14, 19 (1967). *See also McCray v. State*, 305 Md. 126, 133 (1985). The right, however, is not absolute. *Taylor v. Illinois*, 484 U.S. 400, 410–14 (1988). "Thus, where the appropriateness of excluding an accused's witness is a relatively close call, the trial court should avoid possible infringement of constitutional rights by permitting the offending defense witness to testify." *Redditt*, 337 Md. at 635.

We review decisions to admit or exclude evidence under an abuse of discretion standard. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619–20 (2011). The trial court abuses its discretion only when the decision lies outside the zone of reasonable disagreement. *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009). A witness's character for truthfulness may be shown through reputation or opinion testimony. *Jensen v. State*,

355 Md. 692, 694 (1999). Irrelevant evidence is not admissible. *Clark v. State*, 218 Md. App. 230, 241 (2014). A trial court weighs the probative value of relevant evidence against its prejudicial value, and if the probative value is substantially outweighed by the danger of unfair prejudice, then it may be excluded. *Id.*

Maryland Rule 5-608(a)(1), Evidence of character of witness for truthfulness or untruthfulness, provides as follows:

> "(a) Impeachment and Rehabilitation by Character Witnesses.
> (1) Impeachment by a Character Witness: In order to attack the credibility of a witness a character witness may testify (A) that the witness has a reputation for untruthfulness, or (B) that, in the character witness's opinion, the witness is a truthful person."

Rule 5-608(a)(3) limits character witness testimony by preventing the character witness from testifying to specific instances of conduct indicating the fact witness's truthfulness or untruthfulness, including whether a witness testified truthfully in the proceeding. Evidence may be excluded if "the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence" substantially outweighs its probative value. Md. Rule 5-403.

We hold that the trial court abused its discretion in precluding Ms. Farmer-Johnson from testifying to Ms. Everett's character trait of truthfulness. Credibility of a witness is always in issue. Assuming a proper foundation for the testimony, character witnesses should be allowed to testify unless the testimony is cumulative or confusing, particularly where there is a dispute between the defendant's version of the criminal event and that of

the complaining witness or alleged victim. Appellant stated that Ms. Farmer-Johnson's testimony would be limited to her personal opinion of Ms. Everett, i.e., that she was an untruthful person.[1] Although Ms. Farmer-Johnson based her opinion on her interactions with Ms. Everett, specifically the telephone conversation in which Ms. Everett stated she had been untruthful with Ms. Farmer-Johnson, appellant's counsel stated that her testimony would remain within the limits of Rule 5-608 and he not ask about specific instances of untruthfulness. The trial court abused its discretion in precluding Ms. Farmer-Johnson from testifying.

The error was not harmless. Appellant testified to a version of the events underlying the criminal charges. Ms. Everett testified to a different version. Credibility of the witnesses was a key issue in the case. Ms. Farmer-Johnson, the single credibility witness to be called by appellant, would have testified as to Ms. Everett's character trait for truthfulness. We cannot say that the exclusion of her testimony did not affect the jury verdict in this case. *See Dorsey v. State,* 276 Md. 638, 660 (1976).

[1] The dissent is incorrect when it says that Ms. Farmer-Johnson "was only capable of testifying to a singular episode of alleged untruthfulness rather than . . . Ms. Farmer-Johnson's opinion regarding whether Ms. Everett is an untruthful person." In fact the record reflects that the witness would have testified as to her opinion of Ms. Everett's credibility. Moreover the trial court excluded the evidence because "it is not appropriate [and] too far [a]field and it's not going to shed any light on this case or on Ms. Everett's credibility," not on the grounds that there was an inadequate ground to form the basis of an opinion.

IV.

Although we find reversible error on the trial court's exclusion of the character witness, we address the emergency evaluation issue for guidance in the event the State proceeds to retry appellant. We review the trial court's exclusion of evidence under an abuse of discretion standard. *Ruffin Hotel Corp. of Md.*, 418 Md. at 620; *Malik v. State*, 152 Md. App. 305, 324 (2003). A trial court weighs the probative value of relevant evidence against its prejudicial value, and will exclude the evidence if the probative value is substantially outweighed by unfair prejudice. *Clark*, 218 Md. App. at 241. We give significant deference to a trial court's determination that probative value outweighs significant prejudice. *CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 373 (2012).

Maryland Rule 5-403 allows judges to exclude evidence if its probative value is substantially outweighed by the following: the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Probative evidence adds to the likelihood of the truth for which it is offered, and unfairly prejudicial evidence might direct the jury to make a decision based on something other than the evidence, or lack thereof. *Burris v. State*, 435 Md. 370, 392 (2013); *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219–20 (2011). The more probative value a piece of evidence has, the less likely a trial court will be to find the evidence unfairly prejudicial. *Odum v. State*, 412 Md. 593, 615 (2010).

The evidence as to the details of an emergency mental or psychiatric evaluation should not have been admitted in this case. Although the trial judge was correct when he ruled that evidence of the emergency evaluation should be excluded, he abused his discretion in allowing Officer Sapienza to describe emergency evaluations, and to characterize the hospitalization as an emergency mental examination. While appellant's injuries, cuts, and bruises were relevant, introducing mental examination, mental illness, or appellant's potential for inflicting harm on himself or others based on a mental problem was unfairly prejudicial and not relevant to any issue in the case.

The details of an emergency admission procedure have no relevance to any issue in this case. Injecting mental illness is unfairly prejudicial to appellant. We recognized in *State v. Marsh*, 337 Md. 528, 536 (1995), that, however unreasonable, mental illness still carries stigma. The mention of the emergency evaluation's purpose to evaluate an individual because the officers fear that he is a danger to himself and others brings that stigma into the case and could potentially influence a jury to come to a verdict based on that evaluation rather than the facts of the case. *See Burris*, 435 Md. at 392 (holding that the prejudice of the entry of gang related tattoos outweighed the tattoos' probative value because they might lead a jury to disregard the evidence, or lack thereof, of the murder). Additionally, the State expressly wished to use the cuts on appellant's wrists and the subsequent emergency evaluation to prove a consciousness of guilt rather than to focus on evidence that the crime occurred. As appellant argues, the State offered no evidence to

support a finding that appellant attempted to harm himself or that his wounds were self–inflicted.

V.

A.

Finally, we address the issue of sufficiency of evidence. Appellant argues that the evidence was insufficient to support his convictions. To preserve an argument of sufficiency of the evidence for appeal, an appellant must state with particularity in his motion for judgment of acquittal all reasons that the motion should be granted. Md. Rule 4-324. The sufficiency argument is not preserved for appeal if the movant merely states that the evidence is insufficient without expanding on its deficiency. *Montgomery v. State*, 206 Md. App. 357, 385–86 (2012). The defendant must argue the specific way that the evidence is deficient and the particular elements of the crime that are not met. *Id.* A lack of a particularized deficiency in an argument for a motion for judgment of acquittal necessarily results in a failure of preservation. *Id.* When a motion argues for generic insufficiency alone, and limits the argument to solely that, then the court will allow an argument of generic insufficiency at the appellate level and nothing more. *Joppy v. State*, 232 Md. App. 510, 545 (2017).

We hold that the arguments that the evidence was insufficient for the assaults and the violation of the protective order were waived and we shall not consider them. Appellant

never made any arguments before the trial court with any specificity that the evidence was insufficient as to those charges. He merely submitted to the discretion of the trial court.

B.

On the other hand, because the State may elect to retry appellant, we shall consider appellant's argument that the evidence was insufficient to support the judgment of conviction for the offense of aggravated animal cruelty. In contrast to the charges of assault and violation of a protection order, appellant did present arguments to the trial court as to the sufficiency of the evidence of the animal cruelty charge.

Section 10-606(a) prohibiting aggravated animal cruelty states as follows:

> "(a) Prohibited. -- A person may not:
> (1) intentionally:
> (i) mutilate;
> (ii) torture;
> (iii) cruelly beat; or
> (iv) cruelly kill an animal;
> (2) cause, procure, or authorize an act prohibited under item (1) of this subsection; or
> (3) except in the case of self-defense, intentionally inflict bodily harm, permanent disability, or death on an animal owned or used by a law enforcement unit."

A finder of fact may draw inferences from the number and kind of injuries to the animal when weighing the amount of suffering and the criminal intent involved. *Hurd v. State*, 190 Md. App. 479, 493 (2010).

In *Hurd*, on two separate occasions, the defendant shot a neighbor's dogs for running onto his property. *Id.* at 483. He was charged with and convicted of two counts

of aggravated animal cruelty. *Id.* On appeal, the defendant argued that he did not kill the dogs cruelly and therefore the State did not prove the elements of the crime. *Id.* at 493. The court held that, because section 10-601(c)(1) defines "cruelty" as "the unnecessary or unjustifiable physical pain or suffering caused or allowed by an act, omission, or neglect," the jury could infer that the dogs suffered unjustifiable physical pain or suffering between the first shot and the last one. *Id*.

In the instant case, any rational trier of fact could have found the evidence presented by the State sufficient to prove the charge of aggravated animal cruelty. Appellant is incorrect that the absence of certain kinds of testimony (the severity and extent of the dog's injuries, treatment required, and recovery) made the evidence legally insufficient to prove aggravated animal cruelty. As in *Hurd*, the jury was presented with evidence of the dog's wounds, testimony of how they were caused, and then returned a guilty verdict. The evidence and testimony of appellant stabbing the dog several times and slashing her throat was sufficient for any rational trier of fact to infer that this conduct fell under intentionally mutilating, torturing, cruelly beating, or cruelly killing an animal.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY CHARLES COUNTY.

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STATE OF MARYLAND

Friedman,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Friedman, J.

Filed: December 6, 2017

I would affirm Paysinger's conviction. I disagree with my colleagues that the trial court abused its discretion in holding that Ms. Farmer-Johnson's proffered testimony was not admissible under Rule 5-608(a)(1), because as I see it, she was only capable of testifying to a singular episode of alleged untruthfulness rather than (A) Ms. Everett's reputation regarding untruthfulness, or (B) Ms. Farmer-Johnson's opinion regarding whether Ms. Everett is an untruthful person. Moreover, while I would prefer that the Assistant State's Attorney and Officer Sapienza had limited their questions and answers to the limits the trial judge set out, Slip Op. at 5 ("Well, all—all you're going to say—we're not going to go into any detail beyond that that happened [*i.e.* that Paysinger's wrist was cut] and he was taken there [*i.e.* to the hospital] period"), I decline to join my colleagues in holding that it was an abuse of discretion to allow this testimony. Therefore, I dissent.[2]

[2] I agree with my colleagues that the evidence was sufficient to support Paysinger's convictions.