Circuit Court for Anne Arundel County
Case No. C-02-CR-15-000716

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 518

September Term, 2017

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MICHAEL DAVID HUSSEY SR.

v.

STATE OF MARYLAND

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Wright,
Berger,
Leahy,

JJ.

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Opinion by Leahy, J.

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Filed: May 9, 2018

In the pre-dawn hour of 4:00 a.m. on September 11, 2015, Mrs. Lucia Hussey was leaving her home for her job at a local bakery. The day before, she had obtained a final protective order ("FPO") against Michael David Hussey, Sr. ("Appellant") her husband of 37 years. As Mrs. Hussey exited the front door of her condominium building, she heard a noise, turned around, and there stood her husband. He proceeded to verbally and physically assault her until neighbors intervened and called 9-1-1. Appellant took Mrs. Hussey's car and was eventually apprehended after a high-speed chase across several county lines.

Following a bench trial in the Circuit Court of Anne Arundel County, Appellant was convicted of first-degree assault, second-degree assault, disorderly conduct, and driving while privileges were cancelled, suspended, or revoked. For first-degree assault, Appellant received nine years, to be served consecutively with his sentence in Calvert County,[1] three years of probation for disorderly conduct, and time served for his driving conviction. Appellant timely appealed, presenting one issue for our review: "Whether the trial court wrongfully admitted evidence when it allowed Mr. Hussey's wife to testify about irrelevant and highly prejudicial evidence regarding Mr. Hussey's prior conduct."

We hold that the court did not abuse its discretion by allowing Mrs. Hussey to testify as to Appellant's conduct in the courthouse for the FPO hearing on September 10, 2015. Given the temporal proximity between the FPO hearing and Mrs. Hussey's attack, we concur with the circuit court's conclusion that her testimony about Appellant's conduct at

[1] The Circuit Court for Calvert County sentenced Appellant to 38 years, all but six years suspended, resulting from the car chase.

the hearing was relevant to Appellant's state of mind the next morning. We further hold that the circuit court did not abuse its discretion in deciding to admit the testimony because no danger of prejudice substantially outweighed the testimony's probative value.

## BACKGROUND

The following description of events is largely taken from Appellant's trial, which occurred over two days, March 28-29, 2017. Appellant was indicted on seven counts: (1) attempted first-degree murder; (2) attempted second-degree murder; (3) first-degree assault; (4) second-degree assault; (5) reckless endangerment; (6) disorderly conduct; and (7) driving while privilege is cancelled, suspended, refused or revoked.

### A. The Final Protective Order

Appellant and Mrs. Hussey were married for 37 years at the time of his trial. Together, they have two adult children and had lived in a condominium for the preceding 24 years. Appellant last lived in the condominium on July 19, 2015 and, thereafter, had apparently been living in the woods behind it for the several weeks leading up to September 11, 2015.

In July 2015, Appellant and Mrs. Hussey traveled to Busch Gardens in Williamsburg, Virginia for vacation. While there, Appellant had difficulty moving about the park and became argumentative. Mrs. Hussey stated that the next day, when she could not find her park pass and asked for her key, Appellant "slammed her face into the wall [] and kicked her behind her knees" and as she ran to the front desk, Appellant "was calling her all kinds of names[.]" Appellant was arrested and detained in jail.

Back in Maryland, Mrs. Hussey filed a petition for a protective order in the District Court of Maryland for Anne Arundel County. She received an interim protective order on July 27, 2015, and a temporary protective order the following week, which the court extended to August 11, 2015. Appellant was not to contact her or enter the condominium and was ordered to leave that residence. On August 7, 2015, however, the police dispatched to the condominium following reports that Appellant was trying to climb a ladder up the back side of the building, and he was arrested again.

Appellant and Mrs. Hussey appeared before the District Court for an FPO hearing in the afternoon on September 10, 2015, and the court granted an FPO effective for one year. At Appellant's trial underlying this appeal, Mrs. Hussey testified, over objection, as to Appellant's conduct the day of the FPO hearing:

> [The State]: Did he – did you hear him speak whether to you or to other people?
>
> [Mrs. Hussey]: He spoke to me out in the hallway.
>
> [The State]: Okay. And what – how would you describe his demeanor that day?
>
> [Defense Counsel]: Objection.
>
> THE COURT: Overruled.
>
> [The State]: If you know, how would you describe – when you saw him or your interactions, how would you describe his demeanor? You can answer that.
>
> [Mrs. Hussey]: He was angry.
>
> [The State]: And what are you basing that off of?
>
> [Mrs. Hussey]: My standing outside of Courtroom 1 there, he and his attorney were across the hall –

[Defense Counsel]: Objection.

THE COURT: What's the basis for your objection?

[Defense Counsel]: **I think at this point we're delving into something that's not relevant. We're talking about something that happened the previous day before.**

THE COURT: **Okay. Again, it goes to the weight, not the admissibility. I think there's relevance to the overall state of mind a day later. If it were a more attenuated time, perhaps that argument would stick, but for now it goes to the weight.**

[The State]: So, Mrs. Hussey, that means you can answer the question. So what are you basing your assessment that he was angry on?

[Mrs. Hussey]: Because he walked up to me and I didn't see him when he first came up because my head was turned or body, whatever, but I turned around and he was right in front of me and he said to me, "The Court is going to offer you a deal. Take it."

(Emphasis added).

Mrs. Hussey then described Appellant's actions following the court's grant of an FPO. Outside the courtroom, she said that "they all kept me away from [Appellant]" and after she returned from the restroom, Mrs. Hussey recalled that Appellant "was downstairs on the first floor and you could hear him. I couldn't hear what he was saying, but he was very loud and they just kept sheltering me and keep him away[.]" She continued:

[Mrs. Hussey]: . . . [T]he men downstairs, clerks or bailiffs or whatever they are, told him that he had to lower his voice and he needed –

[Defense Counsel]: Objection.

[Mrs. Hussey]: -- to go outside

[The Court]: Overruled.

Mrs. Hussey then left with her attorney through a back door of the courthouse. Despite the no-contact provisions of the FPO, it would be just hours before Mrs. Hussey would encounter Appellant early the next morning.

**B. Events on September 11, 2015**

Mrs. Hussey has worked at Shopper's Food and Pharmacy for 23 years, making doughnuts six days a week. She has a set schedule, beginning work at 4:30 a.m., and to arrive on time, she leaves the condominium by 4:10 a.m. Sticking to her routine on September 11, 2015, she left her condominium at 4:06 a.m., and although it was dark, the condominium complex's light posts were illuminated.

As she exited her building, Mrs. Hussey—a slight woman standing only five-feet two-inches tall—heard a noise and turned around to see Appellant, standing six-feet tall behind her. She testified that he called her "B_tch" and that the next thing she knew, she was on the ground. Unable to focus because she lost her glasses, Mrs. Hussey claimed that Appellant straddled her and choked her while trying to grab her purse and keys. She managed to set off her car's alarm and screamed for help before yelling, "Fire".

Appellant provided a different version of events. He stated that he waited for Mrs. Hussey outside that morning because he wanted to reconcile with her. Appellant testified that Mrs. Hussey turned, saw him, and then threw her coffee on him. According to him, she then "took a step-and-a-half backward" and fell down. Appellant then said he went to her side to see if she needed help, but then she laid back, closing her eyes and "playing possum." "[A]ll of a sudden, the lightbulb goes off[,]" and Appellant thought he would

take her car because she had taken his truck. Appellant's driver's license was suspended, and he does not recall hearing a car alarm at all.

Ms. Dawn Kemp, who lived in the building, called 9-1-1 and described the attack, relaying that "[t]here is a couple outside my condo . . . and the woman's on the ground and the man is just pulling on her." Ms. Cheryl Campbell, another neighbor, was awakened by a car alarm and then heard screams. She looked out her bedroom window, seeing Mrs. Hussey on the ground with Appellant on top of her, choking her. As she went outside, she ran into another neighbor, Mr. Donald Cannata, who was also going to help. Ms. Campbell said she would call 9-1-1 while Mr. Cannata pulled Appellant off Mrs. Hussey. Mr. Cannata's girlfriend, Ms. Leslie Wiseman, likewise heard the noises outside. She saw Appellant on top of Mrs. Hussey before returning to her condominium to call the police. She observed Mr. Cannata separate Appellant from Mrs. Hussey; however, Appellant was able to get back to Mrs. Hussey and then proceeded to "body slam", choke, and bite her. Appellant then took Mrs. Hussey's keys and drove off in her 2009 Hyundai Santa Fe. The 9-1-1 calls were played into the record at trial.

Emergency services arrived at the scene. Corporal Scott Arruda noted that Mrs. Hussey told him, "He beat me up." Cpl. Arruda focused on securing the scene and spoke with Ms. Campbell, Mr. Cannata, and Ms. Wiseman, who all "seemed to be calm." Ms. Gabrielle Strauss, an EMT, helped Mrs. Hussey stand and noted that Mrs. Hussey "had snot on her face and like mulch and pieces of leaves from the ground." She testified that Mrs. Hussey had one laceration above her right eye and one above her lips, complained of

pain on the back of her head, suffered bruises on her right and left forearms, and had an abrasion on her right forearm. Ms. Strauss took her to the hospital and stated that Mrs. Hussey denied ever losing consciousness.

Meanwhile, their son, Michael Hussey Jr. testified to Appellant's whereabouts after Appellant left the scene. He had received a phone call from Ms. Wiseman that Appellant had attacked Mrs. Hussey and then saw Appellant drive by his house in Saint Mary's County around 8:00 a.m. He tried to follow Appellant but lost him in traffic. Mr. Hussey Jr. then contacted Appellant, but Appellant would not tell him his location because he thought his son would call the cops. But then, Mr. Hussey, Jr. saw Appellant drive by again around 11:00 a.m. and called 9-1-1. Deputy Gott, from Calvert County, spotted Appellant in the Santa Fe at 10:52 a.m., and gave chase. The Deputy followed Appellant for "eight, nine miles" at "speeds ranging from 80 to 100 miles an hour." Ultimately, "around 13 or 14" Calvert County police vehicles were involved in the chase. Appellant was arrested after he lost control of the vehicle and hit a tree.

At the conclusion of trial and following a 10-minute recess, the court announced its findings. The judge began by observing that Appellant was angered by the FPO and that its entry had "proximate value in time to the date in question" because it occurred one day later. He noted, however, that it did not "ascribe too much weight to it because the Court doesn't have to[ because] the Court can look to the date of the incident itself[.]" The judge credited Mrs. Hussey's testimony, as well as many of the other witnesses, while largely discrediting Appellant's testimony. He determined that there was insufficient evidence to

prove either attempted first-degree or second-degree murder and found Appellant not guilty of reckless endangerment. The judge did, however, find Appellant guilty of the remaining charges, including first-degree assault and the lesser-included second-degree assault, disorderly conduct, and driving while his privileges were cancelled, suspended, refused or revoked.

At the sentencing hearing on May 8, 2017, the judge stated specifically, "I want to be absolutely clear that my – the sentence that I'm about to fashion has nothing whatsoever to do with the Virginia case. I think [Appellant is] entitled to the presumption of innocence in that case." After announcing that the sentence is "dedicated to public safety, and when I say public safety, I also mean M[r]s. Hussey," the judge sentenced Appellant to nine years for first-degree assault, to be served consecutively with his sentence in Calvert County, to three years of supervised probation for disorderly conduct, and to time served for the last offense.

Appellant timely noted his appeal on May 24, 2017.

## DISCUSSION

### I.

Appellant argues that the circuit court erred when it allowed Mrs. Hussey to testify as to Appellant's conduct on September 10, the day before the alleged incident. According to Appellant, that specific testimony was not relevant because it would not help the factfinder make "a logical inference that [Appellant] was the person who committed the alleged crimes on September 11." Appellant contends that his actions the day prior had no

material bearing on his mental state on the day of the alleged crimes. He implores that any probative value in Mrs. Hussey's testimony about September 10 was outweighed by its prejudicial impact, claiming it was inflammatory and highly prejudicial because it depicted him "as an angry and lurking menace preying on the innocent" Mrs. Hussey. Finally, Appellant believes that the circuit court's error was not harmless because Mrs. Hussey's testimony about September 10, 2015 was the crux of the State's case.

The State maintains that the circuit court correctly allowed Mrs. Hussey's testimony regarding September 10 because her description of his demeanor and actions was relevant to Appellant's motive and intent the next morning. The State continues that her testimony's probative value was not substantially outweighed by unfair prejudice because of the limited timeframe between the events. Lastly, the State purports that any error was harmless because other evidence sufficiently convinced the circuit court of Appellant's guilt.

Evidence is relevant when, pursuant to Maryland Rule 5-401, it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Put simply, evidence is relevant when it is both material and probative. *See Snyder v. State*, 361 Md. 580, 591 (2000). "Evidence is material if it bears on a fact of consequence to an issue in the case[,]" *Smith v. State*, 218 Md. App. 689, 704 (2014) (citations omitted), whereas "[p]robative value relates to the strength of the connection between the evidence and the issue . . . to establish the proposition that it is offered to prove." *Id.* (internal citations and quotations omitted). Irrelevant evidence is inadmissible. *See* Md. Rule 5-

402. Whether the evidence is legally relevant is "a conclusion of law which we review *de novo*." *Smith*, 218 Md. App. at 704 (internal quotations omitted).

Maryland Rule 5-403 provides that relevant evidence may also be excluded, however, "if its probative value is substantially outweighed by 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." "[T]he issue of whether a particular item of evidence should be admitted or excluded 'is committed to the considerable and sound discretion of the trial court[.]'" *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011) (internal citations omitted). We, therefore, review the trial court's decision to admit relevant evidence for abuse of discretion. *Snyder*, 361 Md. at 611.[2]

We hold that Mrs. Hussey's testimony regarding Appellant's conduct on the afternoon prior to her attack was relevant because it goes, at least minimally, to Appellant's mental state. Mrs. Hussey spoke about her experience at the courthouse the day before, relating that Appellant was angry, that he approached her from behind, that she could hear him speaking loudly on the floor below her, and that she had to be escorted out of the courthouse. These descriptions are all at least of limited relevance to Appellant's actions on September 11, especially given the temporal proximity between the FPO hearing and

[2] We first note that Appellant does not challenge the admittance of the testimony at issue under Maryland Rule 5-404(b), which governs the admissibility of "prior bad acts." *See Snyder*, 361 Md. at 602. As a result, we consider Appellant's challenge solely under the purview of Maryland Rules 5-401 and 5-403.

Mrs. Hussey's attack around 4:00 a.m. the next morning. Undoubtedly, while not the crux of the State's case, Mrs. Hussey's testimony regarding events on September 10 tended to show that it was more probable that Appellant committed the acts on September 11 for which he was charged in Anne Arundel County.

This relevancy is what distinguishes the case *sub judice* from *Taneja v. State*, cited by Appellant. 231 Md. App. 1 (2014). In *Taneja*, a husband and wife were convicted of murdering Taneja's ex-wife. *Id.* at 3-4. On appeal, Taneja asserted that the trial court erred when it excluded three witnesses' testimony, which would suggest that his wife's son fired the shots that killed his ex-wife because of an incident several years prior. *Id.* at 9. We agreed that the testimony was irrelevant and would have confused the jury, concluding that it could only establish—at most—the "barest of suspicion" that someone else had motive to kill the ex-wife, not that the wife's son could have committed the murder. *Id.* at 18-19.

The holding in *Cook v. State* is more akin to the present case. *See* 118 Md. App. 404, 417 (1997). In that case, the appellant killed his significant other, apparently because she took a co-worker to and from work. *Id.* at 407-10. At trial, the victim's manager testified to a hostile confrontation two months prior to the murder, during which Appellant charged that the manager had received a ride home from the victim. *Id.* at 414-16. Appellant contended this testimony was irrelevant, being too attenuated to demonstrate motive; we disagreed, holding that it was relevant because it showed that Appellant "disapproved of and was very upset with the victim driving [the co-worker.]" *Id.* at 416-17.

Here, unlike the several years attenuating the testimony at issue in *Taneja*, *see* 231 Md. App. at 18-19, Mrs. Hussey's testimony referred to Appellant's conduct the day prior to her assault. The events of September 10 are related temporally even more closely than the testimony in *Cook* that this Court found to be relevant. *See* 118 Md. App. at 416-17. Mrs. Hussey's testimony went to Appellant's motive—demonstrating that he appeared behind her, angry and yelling before being escorted from the courthouse—only hours before he appeared outside her condo on the morning of Mrs. Hussey's attack. We hold that Ms. Hussey's testimony was relevant because it had indicia that tended to prove that Appellant assaulted her on September 11.

Accordingly, we also hold that the court did not abuse its discretion when it admitted Mrs. Hussey's relevant testimony. Contrary to Appellant's contention, the court was not inflamed by Mrs. Hussey's descriptions. The court reiterated in its verdict that, regarding Mrs. Hussey's testimony about September 10 and the FPO, it did not "ascribe too much weight to it because the Court doesn't have to." **R-1629.** That testimony was not graphic or particularly emotional; it was a small part of what she said on record that day, and the State used the evidence to extrapolate on Appellant's mental state. Thus, no unfair prejudice substantially outweighed the probative value. *See Ware v. State*, 360 Md. 650, 672-73 (2000) (ruling that testimony of statements, including asking whether individual was "bulletproof", made three hours before murders was probative of Ware's angry and violent frame of mind and not unfairly prejudicial). The trial court was presented with a mass of evidence about the events on September 11, including witness testimony and

physical evidence, such that, we conclude, Mrs. Hussey's testimony regarding September 10 did not unduly affect the court's decision.

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**