

Circuit Court for Washington County  
Case No. C-21-CR-19-000295

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 675

September Term, 2024

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BRIAN HANFORD MURPHY

v.

STATE OF MARYLAND

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Friedman,  
Albright,  
Kehoe, Christopher B.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Albright, J.

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Filed: May 15, 2026

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Brian Hanford Murphy, Appellant, was indicted in the Circuit Court for Washington County for sexual abuse of a minor, continuing course of conduct with a minor, and sexual solicitation of a minor, all against R.L.<sup>1</sup> In November of 2023, following a jury trial, Mr. Murphy was convicted on all counts, and sentenced to fifty-five years of incarceration with all but forty-five years suspended. On appeal, Mr. Murphy raises one question for our consideration,<sup>2</sup> which we rephrase as:

Did the circuit court err or abuse its discretion in admitting evidence that Mr. Murphy had been investigated in 2007 and that as part of that investigation, two search warrants had been executed, one of Mr. Murphy's home and the other of his computer?

We answer Mr. Murphy's question in the negative, and affirm the judgments of the circuit court.

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<sup>1</sup> Although the victim was an adult at the time of trial, because the abuse occurred when she was a minor, and to protect her and her family's privacy, we refer to her and her family using initials different from her own.

<sup>2</sup> Mr. Murphy phrased his question as follows:

Did the trial court err in allowing repeated references to a 2007 criminal investigation into Mr. Murphy, during which his computer was seized and his home was searched pursuant to two search warrants, permitting the jury to speculate about Mr. Murphy's 2007 conviction for possession of child pornography?

## BACKGROUND

### *Interactions Between Mr. Murphy and R.L.*

This case arises out of the sexual abuse perpetrated against R.L., the minor daughter of a family friend of Mr. Murphy. Mr. Murphy and his family had regular contact with the L. family because Mr. Murphy's mother was R.L.'s mom's godmother. At the time of the abuse, R.L. had known Mr. Murphy for her whole life, and was left in his temporary care on several occasions. In 2018, over ten years after the abuse occurred, R.L. disclosed that between 2003 and 2007, when she was a child, Mr. Murphy on several occasions fingered her, exposed himself to her, and vaginally raped her while she was in his care.

A decade before R.L.'s disclosure, in 2007, the L. family cut off all contact with Mr. Murphy after he was investigated for and convicted of unrelated child pornography charges. As part of the 2007 investigation, Maryland State Troopers executed two search warrants, one on Mr. Murphy's home and the other on his computer. Found during the searches were physical and digital photos of R.L. Specifically, the police seized a school picture of R.L., a photo of R.L. in a bathing suit, and a photo of an erect penis posed next to a copy of R.L.'s school picture ("the photos"). Although R.L. and the rest of the L. family were interviewed in 2007 regarding the children's interactions with Mr. Murphy, no charges related to R.L. arose out of that investigation.

After R.L.'s disclosure in 2018, Mr. Murphy was indicted for sexual abuse of a minor, continuing course of conduct with a minor, and sexual solicitation of a minor.

*Mr. Murphy's Motion in Limine*

Prior to the start of trial, Mr. Murphy motioned the court to exclude evidence relating to his 2007 convictions for possession of child pornography, the investigation leading to the convictions, and the photos obtained during that investigation. In his written motion, Mr. Murphy argued that (1) the evidence related to the prior criminal case was irrelevant, (2) the evidence relating to the 2007 investigation and photos did not “satisfy any of the recognized exceptions for admitting prior crimes evidence,” and (3) admission of the conviction and related evidence would cause undue prejudice to Mr. Murphy.

At the hearing on Mr. Murphy's motion, the State agreed not to introduce evidence of the conviction itself, but it opposed exclusion of the photos, references to the 2007 investigation and search warrants that produced the photos. Mr. Murphy's counsel argued that because both the photos themselves, as well as any reference to the investigation that had uncovered the photos, were more prejudicial to Mr. Murphy than probative, both were inadmissible propensity evidence under Maryland Rule 5-404(b). In response, the State argued that the photos were not “other crimes” evidence, but evidence of the charged offense; that the photos were probative of the exploitation element of sexual abuse of a minor; and that the evidence “cut both ways because [R.L.] didn't make any disclosures in 2007.”

After hearing from both parties, the circuit court requested more argument as to how to handle references to the investigation that had produced the photos:

We're narrowing it down to that a search warrant was performed based on a nebulous investigation, not going into any detail, and that these photographs -- I do believe the photographs are more relevant than they are -- well that they are relevant and sufficient and should come into this investi -- into this case, so assuming that the pictures are admitted, as far as the investigation leading up to the -- the attention of them, how would you prefer that?

The defense suggested that any reference to how the photos were obtained be “limit[ed] to just an investigation rather than search warrant,” because using the term search warrant “leads to a prejudicial effect to Mr. Murphy.” The State contended that reference to a search warrant was necessary to avoid inviting the jury to speculate that the police activity had been at all illegal or improper. Ultimately, the court denied the motion to exclude the photos,<sup>3</sup> and decided to wait to rule as to the investigation itself until the relevant witnesses were called.

### *Mr. Murphy's Trial*

Mr. Murphy was tried November 14 to 17, 2023. The State called R.L., several members of the L. family, and several Maryland State Troopers who had participated in the 2007 investigation. Mr. Murphy, who testified in his own defense, called his brother, his wife, and an expert witness.

During her testimony, R.L. was asked about being interviewed twice by social workers in 2007 regarding her contact with Mr. Murphy. These interviews were conducted as part of the investigation into Mr. Murphy after the photos of R.L. were discovered in his home, though this was not made clear to the jury at the time of R.L.'s

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<sup>3</sup> On appeal, Mr. Murphy does not challenge the circuit court's denial of his motion vis-à-vis the photos.

testimony. R.L. testified that in 2007, she told the social worker that Mr. Murphy “would squeeze [her] butt and ask [her] for a kiss,” and that he was “weird” and “creepy,” but that she did not make any further disclosures.

After R.L.’s testimony, the State initiated a bench conference, asking for “guidance . . . regarding what the Court’s decision was [about] how to deal with reference to the 2007 investigation and warrants” while questioning the rest of its witnesses. The court stated:

I think enough has come out now hearing that testimony [from R.L.], that they know there was some type of investigation 2007. I think it would be appropriate as well to simply indicate the 2007 investigation and I do agree that it is more appropriate[,] that using the term “search warrant,” uh, does give a basis for inside Mr. Murphy’s house. I understand Defense’s objection to that, and I certainly will accept a continuing objection to the use of that term, but I think context is necessary for the jury to understand why they were in his house at all. Just “search warrant,” nothing else. Just “investigation 2007,” nothing else. We’ll keep it as clean as possible.

The defense clarified that it was “not challenging [the police’s] entry into the home,” such that use of the term search warrant was not necessary to justify the Trooper’s presence in Mr. Murphy’s home. Instead, the defense suggested that references be limited to the context of “as part of an investigation, we . . . seized this property.” The court once again concluded that,

Well here’s the thing, I -- factually it would be correct. Not including [reference to a search warrant] could lead to speculation among the jury about how things took place, which I don’t think is in the best interest of -- of justice or the trial. So I’m going to allow them to indicate, investigation, did a search warrant, and that’s what they recovered or search warrants. I guess there’s a phone or a computer and a . . . Okay. So we’ll just say “search” -- Let’s just say “search warrant,” and everything was recovered pursuant to that, okay?

Following this ruling, the State called four current and former Maryland State Troopers who had participated in the 2007 investigation to prove that the photos, as well as the penis in the photo, belonged to Mr. Murphy. Each of these witnesses—Matthew Kail, John Casey, Troy McDonogh, and Richard Bachtell—testified to their involvement in the 2007 investigation, with several describing their involvement in executing search warrants on the Murphy home and obtaining the photos.

Lieutenant Kail, who had authored the initial 2007 search warrant, discussed being “involved in a criminal investigation with Mr. Murphy . . . as the criminal investigator.” He testified that he had “author[ed] a search warrant” for Mr. Murphy’s home in 2007 and had interviewed Mr. Murphy to ask him to identify R.L. in the photos seized from the search. Officer John Casey, a digital forensic examiner, testified that he had seized Mr. Murphy’s computer and a digital camera from his home pursuant to the search warrant, and had obtained the photos of R.L. via a search of both devices’ data. The photos in question—R.L.’s school photo, R.L. in a bathing suit, and the photo of a penis posed with R.L.’s school photo—were admitted and published to the jury during Mr. Casey’s testimony. Officer Casey’s testimony, which was based entirely on his role in the 2007 investigation and search warrant, was used, in the court’s words, to “authenticate” the photographs.

Retired Sergeant Troy McDonogh discussed arranging interviews with all the L. children, as well as executing a second search warrant on Mr. Murphy’s home in 2007. Retired Officer Richard Bachtell also testified about his “involve[ment] in an

investigation regarding [Mr. Murphy], for which he obtained the photos of R.L. from Sergeant McDonogh and participated in the second search of Mr. Murphy's home.

During that search, Trooper Bachtell located the school photo of R.L. in a drawer in the master bedroom.

Following this testimony, the State called Trooper Christopher Plumadore, who had investigated this case, but was not involved in the 2007 investigation. He stated that he was "aware of a previous investigation... that pointed me in the direction of some individuals to interview." Trooper Plumadore also stated that he "just transferred over" some of the evidence from the 2007 case to this one.

In closing argument, the State made repeated references to the investigation and search warrant, stating that the jury "can look through the search warrant photos of [Mr. Murphy's] residence." The State further argued:

The data [of the photos of R.L. found on Mr. Murphy's computer] was discovered deleted. It was discovered deleted during search warrant number one executed [May] 10th, 2007. It wasn't the only deleted data on Brian Murphy's computer is the one that caught everybody's attention. Grainy photos, thumb.db's, little thumbnail files were all that was left. But it was enough to be able for investigators to take note. And Trooper Bachtell received those photographs from the Computer Crimes Unit at the Maryland of the Maryland State Police and made contact with [R.L.'s] family. He said he was pretty confident it was [R.L.] but it confirmed with them to make sure. And indeed they confirmed that it was [R.L.]. At that point, the [L.] children are interviewed and we know [R.L.] didn't tell. We've already talked about why.

And so then investigators, at that point, go back on May 30th in 2007, and during search warrant number two, locate the camera with Brian Murphy's or with Maryland State Police equipment located in the garage.

In rebuttal closing, the State’s argument referenced the date of the search warrant as “May 10th of 2007, when the children, the [L.] children weren’t even on anyone’s radar[.]”

Following closing argument, defense counsel motioned for a mistrial, based upon the repeated references to the 2007 investigation and search warrants in the State’s closing argument. Defense counsel argued:

We were very clear at the beginning of this trial that it was supposed to be a 2007 investigation. . . . And [the State] said, May 10th was the search warrant, that the [L.]-- an investigation that the [L.] children weren’t even a target of, which implies now we’ve got a second investigation.

The State pointed out that the entirety of its argument was made up of evidence that had already come in via testimony.

The court denied Mr. Murphy’s mistrial motion. While the court agreed that the jury “could infer there was another investigation . . . possibly giving an inference that the whole investigation was for other reasons,” it found that “what was argued in rebuttal by the State [was] reasonable and reasonably conservative such that it didn’t violate the intent or spirit of the [ ] Court’s [earlier] ruling.”

Just after the court made its ruling, the jury returned with its verdict, finding Mr. Murphy guilty of sexual abuse of a minor, continuing course of conduct with a minor, and sexual solicitation of a minor. He was sentenced to fifty-five years’ imprisonment, with all but forty-five years suspended.

## DISCUSSION

### I. Legal Standard Governing “Other Bad Acts” Evidence

Under Maryland Rule 5-404(b), “[e]vidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith.” This exclusionary rule is intended to prevent the jury from using “evidence of crimes that are not the subject of the trial to conclude that the defendant is a ‘bad person’ and, therefore, should be convicted of the charges for which [the defendant] is on trial for that reason, rather than based on evidence specific to those charges.”

*Browne v. State*, 486 Md. 169, 187–88 (2023) (cleaned up).

A “bad act” within the meaning of Rule 5-404(b) is “an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit.” *Klaunberg v. State*, 355 Md. 528, 549 (1999). Further, Rule 5-404(b) does “not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes.” *Odum v. State*, 412 Md. 593, 611 (2010). Intrinsic means, “at a minimum, other crimes that are so connected or blended in point of time or circumstances with the crime or crimes charged that they form a single transaction, and the crime or crimes charged cannot be fully shown or explained without evidence of the other crimes.”

*Id.*

Other crimes or bad acts evidence “may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge,

identity, absence of mistake or accident, or in conformity with Rule 5-413.”<sup>4</sup> Md. Rule 5-404(b). Before admitting such evidence, however, the circuit court must engage in the familiar three-step analysis laid out in *State v. Faulkner*, 314 Md. 630 (1989). Thus, other crimes or bad act evidence should be admitted if, and only if, the circuit court is satisfied that

(a) the evidence is offered for a non-propensity purpose that is relevant to a genuinely disputed issue in the case; (b) the defendant's involvement in the other bad acts is established by clear and convincing evidence; and (c) the need for and probative value of the evidence is not substantially outweighed by any unfair prejudice likely to result from its admission.

*Browne*, 486 Md. at 178 (citing *Faulkner*, 314 Md. at 634–35). All three prongs of the *Faulkner* analysis must be met. *Id.* at 185.

For each *Faulkner* requirement, we review the circuit court’s determination under a different standard of review. *Id.* at 193. As to whether the evidence was proffered for a non-propensity purpose, we review the circuit court’s determination de novo. *Id.* at 193–94. “We review the [circuit court’s] finding of clear and convincing evidence of the accused’s involvement in other bad acts for sufficiency of the evidence.” *Id.* at 194. We review the circuit court’s “balancing of probative value against the danger of unfair prejudice for an abuse of discretion.” *Id.*

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<sup>4</sup> Maryland Rule 5-413 governs the admission of evidence of “other sexually assaultive behavior by the defendant” in prosecutions for sexual offenses. Although this is a sex offense case, there was no contention below, nor on appeal, that Rule 5-413 was applicable to evidence about the 2007 investigation and search warrants at issue here.

We address each prong in turn below.<sup>5</sup>

## II. Analysis

When other bad acts evidence satisfies the first prong of the *Faulkner* test—that the evidence is offered for a non-propensity purpose that is relevant to a genuinely disputed issue in the case—that evidence is said to have “special relevance.” Rule 5-404(b) includes a non-exhaustive list of purposes which give evidence special relevance, “such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake, or accident.” However, evidence need not fall into one of the listed categories to be admissible; rather, special relevance may be found where evidence is “strongly probative of an issue other than character that is a significant issue in the case.” *Browne*, 486 Md. at 190 (quoting 5 Lynn McLain, *Maryland Evidence: State and Federal*, § 404:5, at 760 (3d ed. 2013)).

On appeal, Mr. Murphy contends that because Mr. Murphy’s prior *conviction* lacked special relevance to this case, “the trial court lacked the discretion to include any reference to how the photos at issue were found.” Further, Mr. Murphy argues that

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<sup>5</sup> The State argues that evidence about the 2007 investigation (and search warrants) does not constitute “other bad acts” evidence within the meaning of Rule 5-404(b). Although for a different reason than proposed by the State, we are inclined to agree. The photos, undisputably relevant here, would nevertheless have been inadmissible had they not been authenticated. That authentication came via the 2007 investigation and search warrants. Therefore, the investigation and search warrants were intrinsic to this case because the “crimes charged cannot be fully shown or explained without evidence of the other crimes.” *Odum*, 412 Md. at 611. For the purposes of this opinion, however, we will assume that the State’s references to the 2007 investigation (and the search warrants) are in fact other “bad acts” evidence under Rule 5-404(b).

references to the investigation were admitted for propensity purposes only, as the references did not “tend to show that [he] engaged in any sexually assaultive behavior against R.L.[.]” nor did they establish any of the types of special relevance listed in Rule 5-404(b).<sup>6</sup>

Here, though, the admitted references to the 2007 investigation and search warrants had special relevance because they were necessary to authenticate the photos of R.L. that were found during that investigation (and as a result of the search warrants issued during that investigation). In a case largely supported by victim testimony, the photos, particularly the penis photo, were some of the only physical evidence available. Because Mr. Murphy denied that the photos were his, and that it was his penis depicted in the photo, the authenticity of the physical evidence was a contested issue in the case. The challenged testimony from the investigating officers all served the purpose of establishing that the photos were what they purported to be, i.e., photos that were in Mr. Murphy’s possession and that were of him. Therefore, references to the 2007 investigation were specially relevant to the case because they were necessary to authenticate the photos, photos that Mr. Murphy concedes were “arguably relevant[.]”

As to the second prong of the *Faulkner* analysis, Mr. Murphy does not dispute that his being the target of an investigation in 2007 was proven by clear and convincing

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<sup>6</sup> As we understand it, Mr. Murphy does not challenge the admission nor the special relevance of the photographs themselves on appeal. Therefore, our analysis addresses only the special relevance of the investigation and search warrants that yielded the photographs.

evidence. Therefore, the second prong of the *Faulkner* test is satisfied and not in dispute.

The third prong of the *Faulkner* analysis “involves the trial court’s assessment of the need for and probative value of the other crimes evidence, which must be carefully weighed against any undue prejudice likely to result from its admission.” *Streater v. State*, 352 Md. 800, 810 (1999). If the danger of unfair prejudice substantially outweighs the necessity for and probative value of the evidence, it should be excluded. *Browne*, 486 Md. at 193. “To some degree, all evidence admitted under Maryland Rule 5-404(b) is prejudicial. Therefore, the third *Faulkner* prong requires the trial court to engage in a Rule 5-403<sup>7</sup> balancing.” *Cousar v. State*, 198 Md. App. 486, 516 (2011).

Mr. Murphy contends that the admission of references to the 2007 investigation were unfairly prejudicial because the references “showed no direct or tangible connection to the events in the case and instead painted Mr. Murphy as a pedophile.” Mr. Murphy acknowledges that the photos of R.L. recovered from Mr. Murphy’s house and computer via the 2007 search warrants were “arguably relevant as evidence of exploitation,” but contends that the trial court did not properly limit references to the investigation to avoid unfair prejudice.

We agree that Mr. Murphy was prejudiced somewhat by the jury hearing that he had been the subject to a prior criminal investigation that involved the execution of two

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<sup>7</sup> Rule 5-403 states that, “[a]lthough relevant, evidence may be excluded 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.”

search warrants on his home. But “the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.” *Odum*, 412 Md. at 615. Rather, the “[p]robative value [of evidence] is outweighed by the danger of *unfair* prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case.” *Id.* (cleaned up). Given that the court properly limited references to the 2007 investigation to keep out information about the existence or nature of the conviction that followed, the mere fact that Mr. Murphy was under investigation would not have caused the jury to respond in a manner incapable of being overcome by logic. In other words, the evidence was not *unfairly* prejudicial to Mr. Murphy.

Moreover, the challenged testimony was extremely probative to the case at hand. Apart from R.L.’s testimony, the photos found in Mr. Murphy’s home and on his computer were the most compelling evidence demonstrating Mr. Murphy’s inappropriate sexual fixation on R.L. However, the photos could not be properly admitted without evidence suggesting that they were what they purported to be. This required the State to introduce evidence relating to the 2007 investigation and search warrants that were the source of the photographs. Because there was little danger of unfair prejudice and high probative value, references to the 2007 investigation and search warrants were properly admitted under Rule 5-404(b).

In an attempt to overcome this conclusion, Mr. Murphy argues that the circuit court erred by not making the relevant *Faulkner* finding as to special relevance on the

record. Mr. Murphy cites *Streater*, 352 Md. at 803–04, a stalking and harassment case where the victim testified that, prior to the events leading to the charges, she had obtained a protective order against the defendant. At trial, the court allowed the State to admit the protective order, which contained factual findings by the issuing court that constituted “other crimes.” *Id.* at 804.

On appeal, our Supreme Court held that the trial court erred in admitting the protective order because “the protective order contained other crimes evidence and there was no threshold inquiry into the admissibility of that evidence.” *Id.* at 805. More specifically, the record contained no mention of the factual findings contained in the protective order, nor any indication that the trial judge had considered them before admitting the protective order into evidence. *Id.* at 811–12. Rather, the trial court had “ruled the entire protective order form admissible without addressing in the record the admissibility of factual references to other crimes that the order contained.” *Id.* at 813. Our Supreme Court held that “should the trial court allow the admission of other crimes evidence, it should state its reasons for doing so in the record so as to enable a reviewing court to assess whether Md. Rule 5-404(b), as interpreted through the case law, has been applied correctly.” *Streater*, 352 Md. at 810 (“[I]t would be better if the trial court spread on the record the reasons for the ruling on the challenge to the admissibility of the other crimes evidence.” (cleaned up)).

Here, unlike *Streater*, it is clear from the record that the circuit court did consider the challenged evidence before denying Mr. Murphy’s motion in limine. Mr. Murphy’s

motion requested that the court exclude reference to the 2007 conviction, the photos of R.L., and the investigation and accompanying search warrants. After Mr. Murphy filed his written motion in limine, the court heard arguments. Although the court at times discussed all three pieces of evidence together, it considered and weighed the admissibility of references to the investigation and search warrants:

[THE COURT]: I do believe the photographs are more relevant than they are -- well that they are relevant and sufficient and should come into this investi -- into this case, so assuming that the pictures are admitted, as far as the investigation leading up to the -- the attention of them, how would you prefer that? We're talking search warrant and photos . . . Yeah. Now I know you're going to have a continuing objection to the photos. I don't have any problem with that.

[DEFENSE COUNSEL]: I think that if we can limit it to just an investigation rather than search warrant, I believe that leads to a prejudicial effect to Mr. Murphy. I don't think that that language needs to be used to accomplish what the State is accomplishing.

While the court did not explicitly perform the balancing analysis on the record, it stated that it was, “just trying to mount the easiest way to get to the evidence [of the 2007 investigation] *with the least possible taint on the jury.*” (Emphasis added.) Ultimately, the court concluded the hearing without ruling on the admissibility of the investigation and the search warrants, instead reserving until the relevant witnesses had testified.

Between the testimony of R.L. and the first police witness, the State asked for “guidance . . . regarding what the court’s decision was...[about] how to deal with reference to the 2007 investigation . . . and warrants.” The court responded:

I think enough has come out now hearing that testimony [from R.L.], that [the jury] know[s] there was some type of investigation 2007. I think it would be appropriate as well to simply indicate the 2007 investigation and I do agree that it is more appropriate that using the term “search warrant,” uh, does give a basis for inside Mr. Murphy’s house. I understand Defense’s objection to that, and I certainly will accept a continuing objection to the use of that term, but *I think context is necessary for the jury to understand why they were in his house at all. Just “search warrant,” nothing else. Just “investigation 2007,” nothing else. We’ll keep it as clean as possible.*

(Emphasis added.)

In *Streater*, the record was devoid of any indication that the trial judge had considered the other crimes evidence contained in the protection order. 352 Md. at 811–13. But here, the circuit court not only considered the probative value and prejudicial effect of the evidence, but purposefully limited the scope of permissible references. Unlike *Streater*, “it is readily evident from the record in this case that the trial judge was fully aware of the governing rule[,]” and applied it in its denial of Mr. Murphy’s motion in limine. *See Streater*, 352 Md. at 812 (cleaned up).

There was no error or abuse of discretion in the admission of references to the 2007 investigation into Mr. Murphy or the search warrants conducted on his home and computer. We therefore affirm the judgments of the circuit court.

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