

Circuit Court for Wicomico County
Case No. C-22-CR-19-000505

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1009

September Term, 2020

COHREN PRICE

v.

STATE OF MARYLAND

Arthur,
Friedman,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 22, 2021

*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.

A jury in the Circuit Court for Wicomico County convicted appellant Cohren Price of first-degree assault, second-degree assault, and reckless endangerment. The trial court sentenced Price to 15 years in prison, suspending all but eight years, after which she filed a timely notice of appeal.¹ Price asks us to consider whether the trial court abused its discretion by “arbitrarily limiting” her cross-examination of the complaining witness on the issue of past abuse.

For the reasons that follow, we affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

Price and Johnie Thomas, IV, began a romantic relationship in 2013 and had a daughter together.² After they ended the relationship in 2017, Price and Thomas continued to co-parent their daughter, with Thomas visiting the child at Price’s home two to three times per week.

One such visit occurred on June 1, 2019, when Thomas spent the day hanging out with Price and the children, watching movies, and having a few drinks. According to Thomas, that evening, as Price was preparing french fries in a deep fryer, he received a phone call from a woman. Price was unhappy that another woman was calling Thomas, and a verbal argument ensued.

¹ After her trial counsel failed to file a notice of appeal, Price petitioned the trial court for post-conviction relief. The parties stipulated that Price was entitled to file a belated notice of appeal, and the trial court permitted her to do so within 30 days of its November 13, 2020 order. Price filed her notice of appeal the same day.

² Price’s older daughter from a previous relationship also lived with her.

The argument escalated to a physical altercation, with Price hitting Thomas several times. To stop the continued blows, Thomas grabbed Price by the shoulders, pushed her to the ground, and held her there.

Thomas released Price, but when she got up and continued swinging at him, he pushed her to the ground again. Rising again from the floor, Price went to the living room and retrieved from her purse mace or pepper spray, which she sprayed in Thomas's face.

Unable to see, Thomas went to the kitchen sink to rinse his eyes and face. As he turned around, Price threw the deep fryer, which still contained hot oil, at him.

Realizing he had to get to a hospital, Thomas gathered his belongings and left the apartment. As he walked in the parking lot, Price drove toward him in her car, “running right up to the back of [his] heels.” He ran around some trash cans to avoid being hit and then continued walking toward the hospital. He did not see Price again.

Thomas went to the emergency room at Peninsula Regional Medical Center (“PRMC”), where the burn wounds to his face and arm were wrapped. He was referred to the Johns Hopkins Hospital burn unit for further treatment, ultimately requiring six painful debridement sessions (a medical procedure in which dead skin is scraped from burn wounds). At the time of trial, Thomas remained scarred from the oil burns on his face, arms, and torso.

Salisbury Police Department Sergeant Jonathan Oliver responded to PRMC for an assault call. Thomas was unconscious, but Oliver observed severe burns on the man's face and arm.

Oliver went to Price’s apartment to interview her about the incident. Price told him that she had sprayed mace on, and thrown hot grease at, Thomas while defending herself during an altercation; her version of the events, however, changed during the course of the interview. Oliver observed that Price had slight burn injuries to her arm and chin.

Price was transported to the hospital for treatment, after which she was arrested for assault as the “primary aggressor” in the altercation with Thomas. Thomas was not charged.

Price testified that following the verbal altercation with Thomas, she tried to get away from him to cool off, but he followed her around the apartment, invading her personal space. She slapped him, and he attacked her, held her to the ground, and tried to choke her from behind as she lay on her stomach. She blacked out for a moment and then yelled for her daughter to get her keychain, which contained the pepper spray. As Thomas let her up, she discharged the pepper spray in his face.

Price said she then ran toward the kitchen, with Thomas following. She picked up the deep fryer, intending to hit him with it, but he grabbed the other side, causing the hot oil to spray and injure both of them. Price said she was unaware there was still hot oil in the pot, and she denied purposely throwing hot oil at Thomas.

Price ushered the children to her car and watched Thomas leave the apartment approximately five minutes later. She said she followed him just to make sure he was gone but did not try to hit him with her car. She then returned home, where she stayed until the police arrived. On cross-examination, Price acknowledged that she had not told Oliver, on the night of the incident, some of what she had just testified to, nor had she disclosed any

information about being choked or blacking out until she, unsuccessfully, tried to instigate cross-charges against Thomas.

DISCUSSION

Price contends that the trial court abused its discretion when it limited her cross-examination of Thomas about his past physical abuse of her. Because the testimony would have been “highly probative” as to her motive and whether her actions constituted self-defense, Price concludes, the court’s ruling unfairly limited her right of confrontation and denied her most effective line of defense.

During his cross-examination of Thomas, defense counsel asked:

Defense: Okay. Has there ever been any physical altercation in the past between the two of you?

State: Objection.

Court: Approach.

(Whereupon, counsel and the Defendant approached the bench and the following occurred at the bench:)

Defense: Your Honor, I believe it’s relevant to the fact that, I mean, the defense is going to be obviously there was a self-defense argument and it’s going to show, this tends to show why Ms. Price used the pepper spray on him. . . in the situation I think is relevant [sic] that he did physically assault her in the past. I think that the jury should be able to hear that in order to--just in order for the Defendant to file a defense in this case.

State: Self-defense hasn’t been generated. We have not heard from Ms. Price or I don’t know if we plan to hear from Ms. Price or not. But second of all, there’s no police report, there’s no documentation of it, it’s an alleged prior event

that wouldn't rise to the clear and convincing evidence.

Court: Can't he just answer that question? In fairness he's already testified that the reason why they broke up is because she's put her hands on him previously.^[3]

State: But the problem is the answer to that is going to be 2016 until now, are we getting into every prior act of violence, they are both going to go on forever.

Court: How far are we going?

Defense: The only thing that I would proffer to the Court to educe [sic] was just a photograph that she previously had a black eye from him in which he admitted.

Court: I don't know that the photograph is going to come in.

State: I object.

Court: The difference [is] the context. But I think you can ask him the question. I'm going to allow you to ask the question, I'm going to allow him to answer that, but I'm not going any further than that. If we go further down the road--I'm not going to get into--we're not going to relitigate every incident that they have had between them. I'm going to allow him to answer that question because he's already testified that, in effect, she put her hands on him. I'll give you a little leeway to ask that and a followup, but I'm not going to start going down--

³ During his direct examination, Thomas arguably opened the door to testimony about prior assaults by testifying, "She swung first at me, and then she hit me twice and I said, no, come on now, you got to stop doing that, because that's the main reason why we broke up in the first place, her putting hands on me."

Defense: Okay.

Court: --a rabbit hole of every incident they have had.

Defense: I understand. There may be a couple followup question[s] on that and if I step out of bounds--

Court: I'm sure she'll object.

Okay, we'll go from there.

Defense: Thank you, Your Honor.

(Whereupon, counsel and the Defendant returned to the trial tables and the following occurred in open court:)

Court: Counsel, you can re ask.

Defense: Has there ever been any other physical altercations in which you put your hands on Ms. Price?

Thomas: Yes, when we were living together.

Defense: And in this situation you testified that you put your hands on her in this incident, correct, on her shoulders, correct?

Thomas: Yes, sir.

Defense: And you're holding her down, correct?

Thomas: Yes, sir.

Defense: So isn't it true that the reason why Ms. Price sprayed you with pepper spray was because you previously put your hands on her--

State: Objection.

Defense: --and that--

Court: Approach.

(Whereupon, counsel and the Defendant approached the bench and the following occurred at the bench:)

Court: How can he even answer that, it's speculative as to the reasons why.

State: He's also testifying on behalf of his client who may or may not testify.

Court: The objection is sustained.

Step back.

The prosecutor moved to strike the question. The court struck the question and instructed the jury to disregard it. Defense counsel asked Thomas no further questions.

Although Price, in part, couches her appellate issue in terms of her right to confront a witness against her, the trial court did not curtail her constitutional right to present a defense or cross-examine the complaining witness. Instead, the court made a ruling regarding the relevance and scope of the evidence.

The Court of Appeals has “regularly adhered to the principle that [an appellate court] will not reach a constitutional issue when a case can properly be disposed of on a non-constitutional ground.” *Parker v. State*, 408 Md. 428, 435 (2009) (quoting *State v. Lancaster*, 332 Md. 385, 404 n.13 (1993)). Because we hold that the trial court properly ruled on the extent of the cross-examination in light of its relevance and scope, we will not address Price's confrontation argument. *See Graves v. State*, 334 Md. 30, 38 (1994) (declining to address the defendant's right of confrontation arguments when reversing the judgment on state evidentiary grounds).

A trial court possesses broad discretion when ruling on the scope of inquiry during cross-examination. *Martin v. State*, 364 Md. 692, 698 (2001). Cross-examination may be limited and controlled by the trial court, under appropriate circumstances and within the sound exercise of that discretion. *Walker v. State*, 373 Md. 360, 394 (2003); *see also* MD. RULE 5-611 (stating that the trial court has discretion as to the scope of cross-examination). “This discretion is exercised by balancing ‘the probative value of an inquiry against the unfair prejudice that might inure to the witness. Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder’s confusion.’” *Pantazes v. State*, 376 Md. 661, 681 (2003) (quoting *State v. Cox*, 298 Md. 173, 178 (1983)). The trial court abuses its discretion only when the “limitations upon cross-examination . . . inhibit[] the ability of the defendant to receive a fair trial.” *Id.* at 681-82.

The Court of Appeals has held that evidence of previous altercations between a victim and a defendant is generally admissible to prove the defendant’s motive. *Snyder v. State*, 361 Md. 580, 605 (2000). And, because “[t]he fact that there is a history of prior abusive acts implies that there is a stronger likelihood of future abuse,” *Coburn v. Coburn*, 342 Md. 244, 258 (1996), the victim’s history of prior violence and abusive behavior against the defendant may provide evidence that the defendant’s fear of violence by the victim was reasonable.

Here, Price asserts that the trial court “mistakenly believed that it was not appropriate for defense counsel to explore past incidents of abuse that Ms. Price had

suffered at the hands of Mr. Thomas,” as “highly probative” to her self-defense claim. Her assertion is not an accurate representation of the court’s rulings.

Despite Price’s claim that the trial court improperly limited her cross-examination of Thomas on the subject by “only allow[ing] counsel to ask one, general question about the existence of past physical altercations,” the trial court specified that it would give defense counsel “a little leeway to ask that [question] and a followup,” and it did not limit counsel when he said he may actually have “a couple followup question[s].” Nonetheless, counsel only asked Thomas if there had been previous physical altercations in which he had “put [his] hands on” Price, and Thomas readily admitted that there had been prior incidents.⁴

Then, when defense counsel asked, “So isn’t it true that the reason why Ms. Price sprayed you with pepper spray was because you previously put your hands on her[?],” the prosecutor objected, and the trial court properly sustained the objection on the ground that “the reasons why” were speculative. Afterwards, defense counsel did not ask Thomas any further questions, although there is nothing in the record to suggest the court would have curtailed further cross-examination.

Price argues that the trial court’s rulings “shut down any line of questioning that could have supported her self-defense claim,” but the court did not impermissibly limit her

⁴ The “only thing” defense counsel proffered to the court as specific evidence of alleged prior abuse was “just a photograph that [Price] previously had a black eye from him[.]” It is unclear to us how a single photo depicting the alleged result of a single past altercation—if admissible—would have advanced Price’s self-defense argument, when Thomas had already admitted to harming Price in anger on a previous occasion.

cross-examination of Thomas. Instead, after the court sustained an objection to her single follow-up question, Price ended her cross-examination. Therefore, any failure of further questioning in support of Price’s self-defense claim rested on her, not the trial court.

In addition, Price elected to testify. She therefore had the opportunity to explain to the jury that she felt the need to defend herself on the night in question because she feared Thomas as a result of his past physical abuse, but she did not make any attempt to bolster her claim during her own direct examination.⁵

Any hindrance to Price’s self-defense claim was not the result of a ruling by the trial court. In other words, to the extent the trial court can be said to have limited Price’s cross-examination of Thomas, it did not affect the fairness of the trial.

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

⁵ Price did explain, on cross-examination, that she and Thomas “had been through altercations before” and that it was her perception that he was attacking her on the night in question because he “has attacked me before,” “has been known to hit me,” and “has done that before.” As a result, the jury did have before it evidence of prior abuse, which it could have considered in assessing whether Price reasonably acted in self-defense.