

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 913

September Term, 2016

ELLA SMITH

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2017

*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.

Following a jury trial in the Circuit Court for Baltimore City, Ella Smith, appellant, was convicted of harassment based on her calling Kimberly Orellana six times over a three day period. Smith’s sole argument on appeal is that the trial court erred in not excluding evidence of her prior bad acts, specifically that she had threatened and slapped Orellana approximately three months before she made the phone calls; that she had been charged with assault based on that incident; and that, as a result of that charge, the court had ordered her to stay away from Orellana. For the reasons that follow, we affirm.

Pursuant to 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 conformity therewith.” However, such evidence “may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.” *Id.* In considering whether to allow “other crimes evidence,” a trial court must undertake a three-step process, which we review under three separate standards. *State v. Faulkner*, 314 Md. 630, 634 (1989). First, the trial court must determine whether the evidence falls under one of the exclusionary “exceptions” such as motive, intent, identity, or absence of mistake. *Id.* This determination by the trial court is a legal one, which we review *de novo*. *Id.* Next, the court must decide whether the defendant’s involvement in the “other crimes” can be established by clear and convincing evidence. *Id.* This we review under a clearly-

erroneous standard. *Id.* at 634–635.¹ Finally, the court must weigh the probative value of the evidence against any undue prejudice the evidence is likely to have against the defendant. *Id.* We review this decision for abuse of discretion. *Id.*

Based on our review of the record, we are persuaded that the trial court did not err in admitting the evidence of Smith’s prior bad acts.² The details of the prior incident between Smith and Orellana were relevant to establish Smith’s motive, and to show that she had the requisite intent to harass Orellana. *See Snyder v. State*, 361 Md. 580, 605 (2000) (stating that “[e]vidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive.”); *Streater v. State*, 352 Md. 800, 816-17 (1999) (noting that evidence that the defendant had previously threatened and assaulted the victim was relevant to show the defendant’s intent, which the State was required to prove as part of his harassment and telephone misuse charges). The evidence also provided background and context for the harassment charge. *See Emory v. State*, 101 Md. App. 585, 615 (1994) (“It is permissible to use ‘other crimes’ evidence where

¹ Smith does not contend that the evidence of her prior bad acts was not established by clear and convincing evidence. Therefore, we do not address that issue on appeal.

² Smith contends that there were five instances where Orellana impermissibly testified about her prior bad acts. In one of those instances, Orellana stated: “[Appellant] has threatened me. She’s threatened to blow up my car, blow my children up and told me to stop, excuse my language, fucking with me.” When viewed in the context, this testimony clearly referenced threats that Smith made to Orellana during the September phone calls and not threats that Smith made prior to the charged offense. Consequently, this testimony did not reference a prior bad act by Smith and was properly admitted.

several offenses are so connected in point of time or circumstances that one cannot be fully shown without proving the other.”). Finally, in light of the close connection between Smith’s prior bad acts and the harassment charge, we perceive no abuse of discretion in the trial court’s finding that the probative value of that evidence outweighed any unfair prejudice.

Although Smith concedes in her brief that “some evidence regarding events prior to the phone calls . . . may have been admissible to prove motive,” she nevertheless contends that the evidence became unduly prejudicial because, at trial, “the court allowed Orellana to far exceed the scope of proper admissibility and list bad act after bad act before the jury without limitation.” But, appellant did not raise this argument below. At the hearing on her motion *in limine*, Smith only argued that the “prior event where [she] was charged and pled guilty to an assault” was not admissible as other crimes evidence because it was “propensity evidence and it would clearly would be prejudicial to [her].” And, when she requested a continuing objection at trial, Smith did not present any additional argument regarding prejudice. In short, at no time, either before or during the trial, did Smith claim that she had been prejudiced by the cumulative nature or excessive quantity of the prior bad acts evidence. Consequently, that argument is waived. *See Thomas v. State*, 183 Md. App. 152, 177 (2008) (“Where a party asserts specific grounds for an objection, all other grounds not specified by the party are waived.”). Moreover,

even if not waived, we do not believe that evidence of Smith’s prior bad acts was so excessive as to be unfairly prejudicial.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**