UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2218 & 2222

September Term, 2014

ANDREW KUGLER

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: November 30, 2015

On May 29, 2014, a jury in the Circuit Court for Prince George's County convicted appellant of first-degree murder and third-degree burglary.[1] The circuit court sentenced appellant to life imprisonment for the murder conviction and ten years, consecutive, for the burglary conviction.

On appeal, appellant presents two questions for our review, which we have rephrased slightly, as follows:

> (1) Did the circuit court err by admitting Jennifer Smith's statement in her 911 call: "I think the people at the house may have been murdered"?
>
> (2) Did the circuit court err when it precluded appellant from cross-examining Umamahesh Bharadwaj about his alleged history of domestic violence?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In early 2011, Amber Schinault, the decedent, lived with appellant at her home in Berwyn Heights, Maryland. In the spring of 2012, their relationship soured, and in June, appellant moved out of Ms. Schinault's home. Ms. Schinault subsequently changed the locks on her home. The parties stipulated at trial that, beginning on June 13, 2012, appellant was not permitted to enter Ms. Schinault's home.

In July, approximately two weeks before Ms. Schinault was killed, she began a romantic relationship with Umamahesh Bharadwaj. On July 21, 2012, Ms. Schinault

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[1] Appellant was found not guilty of first-degree burglary. The circuit court granted appellant's motion to sever the charge of failure to obey a protection order.

picked up Mr. Bharadwaj from his job and drove to a bar in College Park, where they met Mr. Bharadwaj's friend, Andre Joutz. Mr. Bharadwaj consumed "lots of shots" of whiskey. Mr. Bharadwaj testified that, because he was very intoxicated, he "blacked out" and could not remember anything else from that evening other than "trying to crawl up the steps" in Ms. Schinault's home and drinking water from the kitchen faucet.

Mr. Joutz testified that, after they left the bar, he helped Ms. Schinault get Mr. Bharadwaj into her car and drive him to her home. At some point while crossing the street to get to the car, Mr. Bharadwaj fell down. Mr. Joutz saw him lying on his back in the parking lot. When they arrived at Ms. Schinault's home, Mr. Bharadwaj "headed towards the basement," and Mr. Joutz and Ms. Schinault remained in the kitchen discussing her two dogs. Mr. Joutz then heard a "thunk" from the basement and discovered Mr. Bharadwaj lying face down at the bottom of the basement stairs. Mr. Joutz moved Mr. Bharadwaj to a couch and noticed that Mr. Bharadwaj had a "busted lip" and was bleeding. Mr. Joutz cleaned Mr. Bharadwaj's face with some paper towels. Mr. Joutz and Ms. Schinault drank whiskey and watched television, and at approximately 10:00 p.m., Ms. Schinault dropped off Mr. Joutz at a local bar.

Mr. Bharadwaj testified that he woke up the next day on the couch when a neighbor, Christine Dinsmore, knocked on the door. Ms. Dinsmore testified that Ms. Schinault's car was parked "half on [her] lawn and half in [her] driveway," and she asked Mr. Bharadwaj to move Ms. Schinault's car. Mr. Bharadwaj obliged, driving Ms. Schinault's car to a local

bar, where he met Mr. Joutz. After approximately 20 minutes, the two left the bar, and Mr. Bharadwaj drove Mr. Joutz to his job.

The prior evening, July 21, 2012, appellant visited his two friends, Jennifer and Jim Smith, at their home in Montgomery County. Ms. Smith testified that appellant appeared sad and thin, and he said that he missed Ms. Schinault. Appellant did not drink any alcohol while at the Smiths' home. Appellant left the Smiths' home between 11:30 p.m. and 12:00 a.m.

The next day, July 22, 2012, at approximately 4:30 a.m., appellant's mother, Virginia Kugler, woke up and noticed that appellant was not home and his car was gone. At approximately 5:35 a.m., Ms. Kugler was walking her dog, and she saw appellant park his car at her house. She met her son inside. He looked "down," had "a really, really bad cold," and was "really tired." Ms. Kugler also testified that, since appellant broke up with Ms. Schinault, he had been depressed and distraught, and he struggled with the inability to sleep, poor appetite, and weight loss.

At some point between 11:00 and 11:30 a.m., Ms. Kugler left to go to the grocery store. Before she left, she gave appellant a hug and told him not to do "anything stupid." She was afraid that appellant "was going to kill himself" or try to visit Ms. Schinault and "straighten out whatever their problems might be." Between approximately 1:00 p.m. and 2:15 p.m., Ms. Kugler returned home from the grocery store. Appellant and his car were gone. At some point before 3:00 p.m., Ms. Kugler discovered a note left by appellant,

which worried her because it was written in an unusual manner. After reading the note, Ms. Kugler attempted to call appellant, but she received no response.

At approximately 3:00 p.m., Ms. Kugler called appellant again. Appellant answered, and he initially told Ms. Kugler that he had gone to eat brunch with a friend, but when Ms. Kugler asked him if his friend would corroborate that story, he said "no." Ms. Kugler then told appellant that he "should come home," to which appellant responded: "I'm never coming home again." Appellant then stated: "I think I may have done something awful, Mom." Appellant admitted that he had gone to see Ms. Schinault. Ms. Kugler asked if Ms. Schinault was "okay," and he responded: "I don't know, I don't know." Ms. Kugler testified that appellant was crying and very emotional during that phone call.

After her initial phone call with appellant ended, Ms. Kugler wanted to check on Ms. Schinault's welfare. She was concerned that Ms. Schinault would not answer if she saw Ms. Kugler's number, so she contacted Jennifer Smith to call Ms. Schinault. Ms. Kugler called appellant to get Ms. Smith's number, which he gave her. During that conversation, appellant told Ms. Kugler that he was never going to see her again. Ms. Kugler then called Ms. Smith and told her that "[she had] just gotten off the phone with [appellant]," and she "thought he had done something awful to [Ms. Schinault]." Ms. Smith stated that she was going to call 911 "right now," and she hung up the phone.

Ms. Smith then contacted appellant by phone. During that conversation, appellant said "goodbye and that he loved us." Ms. Smith then called 911. During a call to 911,

Ms. Smith provided Ms. Schinault's address to dispatch and stated that she thought "people at the house may have been murdered."

At some point after Ms. Smith initially called 911, the police went to the residence to conduct a welfare check. Mr. Bharadwaj let the police inside. They looked around and asked him "where is she at?" Mr. Bharadwaj stated that he did not know, stating that he thought she was "with a friend having brunch. That's what she said. She told me on Thursday or Friday, earlier on in the week, that she was going to have brunch [with] a friend." After the police were finished conducting their welfare check, Mr. Bharadwaj started to leave Ms. Schinault's house to go to the bar. The police officers asked him for his identification. Because his driver's license was suspended, the officers took the keys and told him he could not drive. The police subsequently picked up Mr. Bharadwaj while he was walking to the bar, and he was taken to the police station for questioning.

Detective Kerry Jernigan, a member of the Prince George's County Police Department, testified that, a short time later, the police returned and the fire department forced open the front door. The detective found Ms. Schinault deceased, lying on her back with a knife in her hand, the blade against her neck. Detective Jernigan testified that it "was quite apparent to [him] based on the multitude of suicides and homicides that [he had] been on, that [Ms. Schinault's] body had been staged in that position."

After Ms. Schinault's body was discovered, a search warrant was issued for appellant's arrest. On the morning of June 23, 2012, Ms. Kugler spoke with appellant by

phone. Appellant asked if Ms. Schinault "was okay," and Ms. Kugler informed him that Ms. Schinault was dead.

That same day, at approximately 9:00 a.m., Officer Timothy Long, a member of the Prince George's County Police Department, spotted appellant in Greenbelt, Maryland. When Officer Long parked and approached appellant's vehicle, appellant "started his car and threw it in reverse and went . . . southbound at a high rate of speed." Officer Long pursued appellant. Other officers intervened, and when Officer Long next saw appellant's car, it had crashed into a fence. An emergency medical technician who was called to the scene noted lacerations on appellant's wrists and neck, which appellant claimed were self-inflicted the previous night.

At trial, the State called several expert witnesses, including a forensic investigator, a crime scene investigator, a medical examiner, a DNA expert, and a cell phone technology expert. The forensic investigator testified that, at approximately 5:30 or 6:00 p.m. on July 22, Ms. Schinault's body was "cold to the touch," and "it looked like she was coming out of rigor." Dr. Ling Li, the assistant medical examiner testified that Ms. Schinault "sustained multiple sharp-force injuries as well as blunt-force injuries to her body," including a large five inch long cutting wound that severed her jugular vein. Dr. Li concluded that the manner of death was homicide.

The DNA expert testified that Ms. Schinault's blood was found on a pair of shoes recovered from appellant's car. The cell phone expert testified that, on July 22, 2012, at 1:56 a.m., appellant's cell phone received an incoming call from a cellular tower located

approximately 422 yards from Ms. Schinualt's house, indicating that appellant's cell phone was in the vicinity of Ms. Schinault's home that night.

The prosecutor also entered into evidence several audio recordings of phone conversations between appellant and Ms. Kugler that were recorded while he was incarcerated pending trial. During one of those phone calls, appellant stated that he had driven by Ms. Schinualt's home "a couple times where [Ms. Schinault's] car was in [Ms. Dinsmore's] front yard," and he determined that she had driven that night because he looked in her car "and the seat was way up." In another conversation, Ms. Kugler commented on appellant's burglary charge, to which appellant responded: "I didn't have the key, and I went in through a window that was broken already."

Additional facts will be added as necessary in the discussion that follows**.**

DISCUSSION

I.

Standard of Review

Appellant raises two evidentiary issues for our review. In *Donati v. State*, 215 Md. App. 686, 708-09, *cert. denied*, 438 Md. 143 (2014), this Court set forth the standard of review for the admissibility of evidence:

> Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court. *Hajireen v. State*, 203 Md. App. 537, 552, 39 A.3d 105 *cert. denied*, 429 Md. 306, 55 A.3d 908 (2012). This Court reviews a trial court's evidentiary rulings for abuse of discretion. *State v. Simms*, 420 Md. 705, 724–25, 25 A.3d 144 (2011). A trial court abuses its discretion only when "'no reasonable person would take the view adopted by the [trial] court,'" or "when the court acts 'without reference to any guiding

> rules or principles.'" *King v. State*, 407 Md. 682, 697, 967 A.2d 790 (2009) (quoting *North v. North*, 102 Md. App. 1, 13, 648 A.2d 1025 (1994)).

The Court of Appeals has noted, however, that "under the rules of evidence, hearsay rulings are not discretionary." *Gordon v. State*, 431 Md. 527, 535 (2013). The Court explained:

> We review rulings on the admissibility of evidence ordinarily on an abuse of discretion standard. Review of the admissibility of evidence which is hearsay is different. Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*.

Id. at 535-36 (quoting *Bernadyn v. State*, 390 Md. 1, 7-8 (2005)). With these principles in mind we turn to the merits of appellant's claims.

II.

911 Statement

Appellant's first contention is that the circuit court erred in admitting into evidence the portion of Ms. Smith's 911 call where she stated: "I think the people at the house may have been murdered." Specifically, he argues that the statement was "(1) irrelevant, (2) hearsay, and (3) unfairly prejudicial."

The State contends that the court properly exercised its discretion in admitting this evidence. It asserts that the "statement was not admitted for the truth of the matter asserted, but rather to explain why the police went to [Ms.] Schinault's home multiple times,

ultimately using force to gain entry." In any event, the State argues, "[e]ven if the statement was inadmissible, any error was harmless beyond a reasonable doubt."

A.

Proceedings Below

Prior to trial, appellant moved to preclude the State from entering into evidence the recordings of the 911 calls made by Ms. Smith, arguing that they were hearsay and irrelevant. The parties subsequently agreed to redact the recordings, excluding any mention of the words "protective order" or "killed." With respect to Ms. Smith's statement that "someone may have been murdered," defense counsel argued that this statement also should be redacted because it was hearsay and prejudicial. He argued that Ms. Smith did not personally know what had happened to Ms. Schinault when she made the 911 call, but "when the jury hears that [appellant] spoke to his mother, then his mother called Ms. Smith, and Ms. Smith called 91[1]," the jury is "going to think that [appellant] told his mother he murdered [Ms. Schinault]." Counsel concluded that, even if the court finds that the statement is non-hearsay, Md. Rule "5-403 still controls" because "it would be incredibly prejudicial to [appellant] to play a tape where the first thing that you hear is I think somebody's been murdered at that house."[2]

[2] Maryland Rule 5-403 provides: "Although 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."

The State argued that the statement was not hearsay because it was being offered to show "the effect that Ms. Kugler . . . had on [Ms.] Smith," and it explains why she was "so insistent with calling [911] four times." The prosecutor also argued that she did not know how Ms. Smith's statement "could be prejudicial when the actual charge is murder."

On May 20, 2014, the circuit court denied the motion, stating as follows:

> It's not hearsay. Which, you know, it's not being offered to prove the truth of the matter asserted. It is under 5-403, probative as to why the police responded, and I think the probative value does -- substantially outweighs any unfair prejudice.
>
> She doesn't indicate any names in the statement. She doesn't identify the defendant. She simply says I think they may have been.

B.

Merits

Appellant contends that the court's ruling was erroneous for three reasons. First, he argues that Ms. Smith's statement was not relevant. He asserts that "the reason why the police went to Ms. Schinault's house was not an issue at trial," and therefore, "if offered for this purpose, the statement was not relevant and was thus inadmissible on relevancy grounds." In support of his argument, appellant cites *Zemo v. State*, 101 Md. App. 303, 310-11 (1994), for the proposition that a jury "has no need to know the course of an investigation unless it has some direct bearing on guilt or innocence."

Second, appellant contends that the statement was inadmissible because it was hearsay. He asserts that Ms. Smith's 911 statement was an out-of-court statement that "had

no probity at all except to tend to prove what was declared in the statement: that people in the house had been murdered."

Third, appellant argues that Ms. Smith's 911 statement was unfairly prejudicial because there was "no identifiably legitimate reason to have had the statement played for the jury in the first place and, therefore, no probity against which to balance its prejudicial effect in the second." Therefore, appellant argues, "to the jury, it appeared as though the appellant had admitted to Ms. Smith that he had killed Ms. Schinault when he, in fact, did not. There being no probative value to the statement at all, it follows that its probative value was substantially outweighed by its prejudicial effect."

The State argues that the circuit court properly determined that the statement was not hearsay. It argues:

> [The] State did not admit the statement to prove the truth of [Ms.] Smith's belief that someone at [Ms.] Schinault's house may have been killed, or even to prove that the murder actually occurred. Rather, the statement was admitted to explain why [Ms.] Smith kept calling 911, and why the police returned to [Ms.] Schinault's house (after responding once, speaking with [Mr.] Bharadwaj, and leaving), and why they decided to break down the door to get inside.

The State asserts that *Zemo*, which "involved a lengthy and deliberate line of questioning that intended to put before the jury statements of a person who was not testifying," is distinguishable. It argues that *Frobouck v. State*, 212 Md. App. 262, 282-83, *cert. denied*, 434 Md. 313 (2013), is more analogous to the facts here. We agree.

In *Frobouck*, the prosecutor asked a sheriff's deputy and a narcotics agent why they responded to a commercial property that Frobouck had rented. *Id.* at 266, 281. The deputy

testified that he "was dispatched there for a suspected marijuana grow," and the agent testified that he had responded after he was called by the deputy. *Id.* at 281. On appeal, Frobouck argued that, under *Zemo*, the trial court should not have permitted the statement because it was prejudicial hearsay, and "the reasons for the police officers' appearance at the . . . property were not 'relevant to a material issue in the case' but conveyed to the jury the message that [a]ppellant's guilt was a foregone conclusion." *Id.* at 281-82. This Court rejected that argument, stating that *Zemo* was inapposite, as follows:

> [T]he objected-to statements of Deputy Bragunier and Agent Glines were not offered to prove the truth of the matter asserted—that there was a "marijuana grow"—but, rather, to explain *briefly* what brought the officers to the scene in the first place. This was not a "sustained and deliberate" line of questioning like that in *Zemo* which we held to have served "no legitimate purpose." . . . Nor, as in *Zemo*, was it intended to put before the jury the testimony of someone who was not testifying in this case.

Id. at 283.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Here, Ms. Smith's statement to 911 dispatch was not offered to prove the truth of the matter asserted, i.e., that a murder actually took place. Rather, it was offered to explain why Ms. Smith repeatedly called 911, why she was so insistent that officers check on Ms. Schinault, and why the police returned to Ms. Schinault's home a second time and used force to enter the house. Under the circumstances of this case, the circuit court properly determined that the evidence was admissible for a relevant nonhearsay purpose.

Appellant's final contention is that any probative value that the statement had "was substantially outweighed by it prejudicial effect." Thus, he asserts, the admission of the statement violated Md. Rule 5-403, which provides: "Although 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."

The State contends that the court properly exercised its discretion in finding that "the probative value of briefly explaining the return of police to [Ms. Schinault's] house" outweighed the potential for prejudice. We agree. There was no dispute at trial that Ms. Schinault was murdered; the only issue was the identity of the murderer. As the court noted, the statement did not mention appellant's name, much less identify him as a suspect. Under these circumstances, there was no abuse of discretion by the trial court in admitting Ms. Smith's statement.

III.

Character Evidence

Appellant next argues that the circuit court erred by prohibiting him from inquiring about Mr. Bharadwaj's prior history of violence toward women. He asserts that the evidence of Mr. Bharadwaj's "history of physical assaults against his former wife and his former girlfriend" was admissible to help him "directly point towards someone else committing the crime," noting that "the entire defense case rested upon blaming Ms. Schinault's death on Mr. Bharadwaj." He further asserts that the court's restriction on

cross-examination restricted his right to demonstrate a "full picture" of Mr. Bharadwaj and improperly impaired his Sixth Amendment right of confrontation because a person with Mr. Bharadwaj's history of violence would have a greater likelihood to be "'biased, prejudiced, interested in the outcome of the proceeding, or [have] a motive to testify falsely' than someone with no such history." (Quoting *Peterson v. State*, 444 Md. 105, 122 (2015)).[3]

The State responds in three ways. First, it argues that appellant did not argue below that Mr. Bharadwaj's bad acts were admissible substantively to prove that Mr. Bharadwaj "acted in conformance therewith by murdering [Ms.] Schinault," and therefore, his appellate contention is not preserved for appellate review. Second, it asserts that, even if preserved, the circuit court properly excluded the evidence "because any slight probative value was outweighed by the danger of unfair prejudice." Third, the State argues that, even if the court erred in excluding the evidence, any error was harmless.

A.

Proceedings Below

Prior to trial, appellant moved *in limine* to cross-examine Mr. Bharadwaj regarding his alleged history of acts of violence toward women. In his motion, he listed multiple incidents that he argued were relevant to his defense, which included the following:

[3] Maryland Rule 5-616 provides: "The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . . (4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely."

- July 18, 2008, Second Degree Assault, case no. 5E00296567;
- September 22, 2008, Domestic Violence Protective Order, case no. 0501SP032612008;
- December 18, 2010, Second Degree Assault and Malicious Destruction of Property, case no. 4A00228414;
- January 13, 2011, Domestic Violence Protective Order, case no. CADV11-00229;
- April 11, 2011, Violation of Ex Parte Protective Order (0E00460593).

In arguing that cross-examination should be permitted, defense counsel stated that Mr. Bharadwaj was in the house where Ms. Schinault was found lying dead. Counsel argued:

> If he puts his character for peace and good order in issue, we intend to cross-examine him on those.
>
> So his cross-examination, Your Honor, depending on largely what he says -- and we're going to ask, frankly, a guy who's been-- has a couple of assaults on his wife, an assault on his girlfriend, numerous protective orders and is in the house where a woman is found beaten to death and stabbed, we think that's fair game for cross-examination on this gentleman.

The State responded as follows:

> Like the second degree assault in 2008 which was entered nolle prosequi, a domestic violence protective order that was dismissed because the petitioner failed to appear, a second -- a PBJ for second degree assault, and then there was another charge that was entered nolle prosequi.
>
> It's highly unfair to allow that evidence to come in specifically noting that these charges were entered nolle prosequi. What the State believes that the defense is trying to do is present un-permitted character evidence to prove that somehow this person that was in the house committed the crime when all of the other evidence points toward Mr. Kugler. And to allow some sort of propensity evidence in the motion, in the defense motion, is also completely impermissible.

After some discussion of the nature and disposition of the charges, the court noted that, with respect to witnesses, "any character evidence would have to go to the issue of untruthfulness," and the court did not think that the prior acts alleged were "probative of untruthfulness." The court stated:

> [H]e would be a witness. And you – you know, you're not speaking of it as impeachment in a traditional way of looking at it. It's impeachment through prior conviction, or felony conviction, or any other type of crime, even if it's a misdemeanor, but it has to go to untruthfulness. And none of this is related to untruthfulness.

Defense counsel then stated that his concern was "a little different," explaining as follows:

> At one point, he tells the police the following: Oh, I'm a peaceful guy. I never argued with her. I never laid a glove on her. He basically stakes out a position with the Prince George's County Police when he's trying to talk them out of charging him that he's not the kind of guy that beats or batters women, okay.
>
> Now, so I agree that under 608 and the other, 404 -- on the truthfulness prong, I agree with the Court, these are not felonies that go to character for truthfulness. But if this witness, Your Honor, on the stand stakes out a position that oh, I'm not the kind of guy that beats women, that batters women, that does violent acts against women, if those words come out of his mouth, I really would like to be able to cross-examine him on his prior violent acts toward women that we know about.
>
> So it's not going to-- it's not going to be just a general character assassination of Mr. Bharadwaj on the truthfulness prong. I agree. It's not a conviction. It's a misdemeanor. But if he stakes out a position that hey, I'm this great guy, I don't do violence against women, I couldn't possibly have done that, I think he's opened the door to be crossed on these issues.

On May 20, 2014, just prior to opening statements, the court made its ruling, as follows:

> [Defense counsel] made it clear that he is not seeking to impeach this witness on the issue of the untruthfulness. I think we had a discussion about the fact that these -- the prior protective orders and any second degree assault does not fall under the rule of impeachment by prior conviction which is Rule 608.
>
> He agreed with the Court about that, but for – but proffered that he wanted to examine the witness if the witness opens the door about his character for peacefulness.
>
> So I considered that motion, and I think that if he opens the door, it would not be -- I think it would be proper if he opens the door for you to question him, [defense counsel], but you can't then seek to prove it by offering extrinsic evidence. That would be improper. You would have to live with his answer.
>
> So we'll get to that obviously. And in that sense, I guess I'm granting your motion to some degree, that you are permitted to do it, but with some limitations.

At trial, Mr. Bharadwaj did not say anything on direct examination about his peaceful character or the probability that he would assault a woman. On cross-examination, the following occurred:

> [DEFENSE COUNSEL:] When Officer Jernigan asked you at 49 minutes before 1 o'clock, that is 49 minutes after midnight, and said -- and you said she, meaning Amber, told me she was going to call Andy. You immediately said, oh, and by the way, I'm not a jealous person, right?
>
> [MR. BHARADWAJ:] Yes.
>
> [DEFENSE COUNSEL:] You volunteered that?
>
> [MR. BHARADWAJ:] Yes.
>
> [DEFENSE COUNSEL:] Because reactions to what women do have no affect [sic] on you; is that correct?

The prosecutor objected to that last question and the following colloquy took place at the bench:

[DEFENSE COUNSEL:] I would like to ask him about, Your Honor, a second degree assault against his first wife, Ms. Bharadwaj, which is case 5[0]296567 in Prince George's County, a temporary protective order. I think I gave that to you in the pleading earlier, Your Honor.

So what we have is, he's admitted that she told him she was going to commit suicide. The body was staged to look like a suicide. He's in the house with her. He volunteers he's not a jealous person.

We can proffer that he was charged with second degree assault by Rosanna Bharadwaj. That was Bharadwaj, protective order. Apparently, she didn't show for the second degree assault and final protective order.

And in December 2010, his girlfriend at the time also charged him with malicious destruction. He did two weekends in jail.

THE COURT: So it goes back to your motion in limine regarding bad acts?

[DEFENSE COUNSEL]: That's right. I think I've laid the foundation now, Judge, because we got him admitting --

THE COURT: If the State opened the door, I might permit you to -- allow you to ask questions, if the door was opened to him being a peaceful person, et cetera, et cetera.

[DEFENSE COUNSEL]: And they asked him yesterday did [you] do harm to Amber Schinault that night.

THE COURT: She asked him did he -- do you want to put anything on the record?

[PROSECUTOR]: I just wanted to renew my motion in opposition to this. I don't think it's fair to question him. I don't think Mr. Brennan asking -- he said he was not a jealous guy. That doesn't mean I'm not a violent guy. And two, he was --defense can argue he's already impeached him with his prior statement.

I think this will just be unfairly prejudicial to the State, first of all. And it's not for character evidence. And it's not for impeachment. These are – for all we know, these could have been false charges on him. And they do not go to his truthfulness.

> [DEFENSE COUNSEL]: They're not offered for truthfulness, Judge. They're offered for being in the house with a dead woman. And he brings up the suicide issue. And –
>
> [PROSECUTOR]: But that's impermissible.
>
> ***
>
> THE COURT: I'm going to deny your request to examine the witness on this basis. I don't think his prior-- **it's not for impeachment the way I see it**. And from my recollection of the motion, I don't think that the foundation has been laid. I know you're saying you believe you did, but I don't think it has been. But given the nature of the prior bad acts –
>
> [DEFENSE COUNSEL]: I'm sorry?
>
> THE COURT: Second degree assault violence, it's just not proper prior -- I'm going to call them prior bad acts to be admitted. Because I understand you believe you laid a foundation. I don't agree with you. So you're not going to be permitted, but you can mark this.

(Emphasis added.).

B.

Preservation

We begin with the State's argument that the contention raised on appeal, that the evidence was relevant to show that Mr. Bharadwaj was the killer, is not preserved for this Court's review. The State argues that appellant "did not argue below that the evidence was admissible substantively pursuant to Rule 5-404(b). Rather, his argument to the trial court makes clear that he was arguing for admission as impeachment evidence, presumably under Rule 5-404(a)." The State asserts that appellant "sought to introduce [Mr.] Bharadwadj's contacts with the court' system only if the State 'puts his character for peace and good order' at issue," and this, "at best . . . was a request to admit the evidence for impeachment

purposes under rule 5-404(a)." It was not, however, "an argument that the evidence was admissible to prove propensity under 5-404(b)." We agree.

Maryland Rule 8-131 provides that, "[o]rdinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." The Court of Appeals has explained the purpose of this rule as follows:

> "(a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possible correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation."

State Bd. of Elections v. Libertarian Party, 426 Md. 488, 517 (2012) (quoting *Fitzgerald v. State*, 384 Md. 484, 505 (2004)). *Accord Bryant v. State*, 436 Md. 653, 659 (2014) ("Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings."); *White v. State*, 324 Md. 626, 640 (1991) (argument not made to the trial court is not properly before the appellate court); *Leake v. Johnson*, 204 Md. App. 387, 406 (2012) ("Ordinarily, an appellate court will not decide an issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'") (quoting *General Motors Corp. v. Seay*, 388 Md. 341, 362 (2005)).

Here, as set forth in detail, *supra*, defense counsel's proffered reason to cross-examine Mr. Bharadwadj regarding prior bad acts was for impeachment purposes, only if Mr. Bharadwadj first said he was a peaceful person. Defense counsel never raised the arguments now made on appeal. Accordingly, they are not preserved. *See Klauenberg v.*

State, 355 Md. 528, 541 (1999) ("It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal."); *Hall v. State*, ___ Md. App. ___, No. 2757, Sept. Term, 2013, slip op. at 10 (filed Sep. 30, 2015) ("While a party need not state the specific grounds for objection unless directed to do so by the court, the Court of Appeals has nonetheless held that 'where a party voluntarily states his grounds for objection even though not asked, he must state all grounds and waives any not so stated.'") (quoting *von Lusch v. State*, 279 Md. 255, 261 (1977)). We will not address the argument made for the first time on appeal.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.