Circuit Court for Anne Arundel County
Case No. C-02-CR-23-001007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2251

September Term, 2023

JUAN MICHAEL PACK

v.

STATE OF MARYLAND

Beachley,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: June 27, 2025

* 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).

The State charged Juan Michael Pack, the appellant, with multiple counts stemming from a series of alleged assaults against the mother of his children between February and March 2023. A jury in the Circuit Court for Anne Arundel County convicted the appellant of two counts each of the following offenses that occurred on different dates: first-degree assault, second-degree assault, reckless endangerment, and violating a protective order.[1] The court sentenced the appellant to concurrent terms of twenty-five years' imprisonment for each first-degree assault conviction and merged the remaining counts for sentencing purposes.

On appeal, the appellant presents two questions for our review:

1. Did the trial court err or abuse its discretion by admitting into evidence a recorded jail call?

2. Was the evidence insufficient to sustain the appellant's two convictions for first-degree assault?

We answer both questions in the negative and shall therefore affirm the judgment of the circuit court.

BACKGROUND

During the trial, the prosecution called several witnesses to testify. The State's main witness, N., and the appellant share two children together.[2] N. testified that she had been

[1] The jury acquitted the appellant of various other offenses alleged to have occurred on certain dates. The jury found the appellant guilty of a fourth-degree sex offense that was alleged to have occurred at the end of February 2023, but the court *sua sponte* vacated the conviction because it claimed that it constituted an inconsistent verdict. The court's decision to do so is not before us.

[2] To protect the victim's privacy, we refer to her as "N."

involved in a relationship with the appellant off and on for eleven years. During the relevant period, the two were not romantically involved, and they lived separately. N. shared an apartment with her father and children, while the appellant resided with a friend in a different apartment.

On March 16, 2022, N. obtained a one-year protective order against the appellant, which was in effect during the events described below. The order did not prohibit all contact but stated that the appellant "shall not abuse/threaten to abuse" N. or the children.

On February 17, 2023, the appellant picked up N. and the children in his vehicle and drove her around while she, as a DoorDash employee, made deliveries throughout the day and into the night. As they drove, N. informed the appellant that she believed she was pregnant. The appellant expressed his suspicion that N. had been involved with another man and that she was carrying that man's child. In the late evening, N. wanted to return home to administer medication to her oldest child and put both of her children to bed.[3] However, the appellant refused, stating, "you're not going home."

For the next nine or ten days, the appellant stayed with N. and did not allow her to leave the vehicle without accompanying her. N. testified that she, the appellant, and the children practically lived out of the car during this time: "[W]e would just be in the car basically the whole time[,] sleeping and everything. Eating. If I had to go to the bathroom, I'd ask if – could I stop and go to the bathroom. Like Royal Farms."

[3] The children were eight and ten years old at the time of trial. N. described the oldest child as "completely disabled" due to a "rare genetic disorder."

Between February 26 and 28, 2023, N. testified that the appellant strangled her while she was seated in the passenger seat of the car. She explained that the appellant leaned over from the driver's side and "choke[d]" her. She testified that "while he's choking me I'm trying to–stop, stop, you're going to kill me. Like stop. And he just kept on and then I passed out." When she regained consciousness, N.'s body was shaking, and she heard ringing in her ears.

On March 1, 2023, N. needed to use the restroom at the Royal Farms store. The appellant, who was "already angry," followed N. into the women's restroom. There, the appellant began yelling at N., drawing the attention of the employees. An employee of Royal Farms testified that she heard screaming coming from the women's restroom. When she entered, she found a man and a woman, whom she later identified as N., inside. Though she did not notice any bruising on N., she observed that N.'s face was very red and her hair was disheveled, suggesting that someone had pulled her hair. The employee sought assistance from the store manager, who ordered the man to leave the bathroom. Ultimately, N. and the appellant left the Royal Farms store. N. testified that at some point that same day, the appellant "ended up choking [her] again," causing her to lose consciousness for about a minute.

N. testified that the appellant told her "over and over again" that he was going to kill me" and "he kept strangling me and abusing me." She made attempts to escape the situation in ways that would not put her in harm's way and that would not require leaving her children, but "it was kind of hard to try to do it all."

On March 2, 2023, the appellant and N. went to pick up their son from school. N. spoke to the school's social worker and asked for help. N. testified that she had a black eye, was distraught, and had been crying. N. informed the social worker that she feared the appellant would kill her and asked the social worker to call the police. The social worker testified that N. seemed tense, harried, and rushed. After walking out with N., the social worker introduced herself to the appellant, who was in the vehicle. Once the appellant and N. left, the social worker contacted the police.

The following day, N. and the appellant were inside N.'s father's apartment when police officers arrived and took the appellant into custody.

N. testified that because of the strangulations, she "could barely talk. It was very hoarse. It was sore. I couldn't – any time I'd try to turn my neck[,] it hurt a lot. And then if I tried to swallow anything, it would hurt to swallow[] [i]f I . . . ate." A forensic nurse examiner conducted an examination of N. on March 4, 2023. During the examination, the nurse observed bruising and abrasions on N.'s face, both legs, and back. In addition, she saw an abrasion on N.'s upper lip and bleeding under the skin above N.'s right eyelid. The nurse confirmed that N. had a raspy throat, a hoarse voice, and difficulty swallowing. She also identified photographs of N. that she had taken, which were admitted into evidence.

DISCUSSION

I.

Admissibility of the Recorded Jail Call

The circuit court admitted a redacted recording of a four-and-a-half-minute jail call over the defense's objection. This recording was played for the jury. However, the court reporter did not transcribe the audio as it played because it was "mostly inaudible/indiscernible." The prosecutor proffered that the caller, whom the prosecutor asserted was the appellant, instructed the person whom he called to "put a bug" in N.'s "ear" and ask her "not to come to court."

The appellant argues that the court erred or abused its discretion by admitting the recorded call because the statements in it were hearsay. While he acknowledges various exceptions to the rule against hearsay, he contends that the prosecutor did not establish a sufficient foundation to support any applicable exception, the statements were irrelevant, and their prejudicial effect substantially outweighed any probative value.

The State responds that the statements were admissible under the hearsay exception for statements of a party-opponent, the voice in the recording was authenticated as that of the appellant, the statements made by the appellant during the call were relevant as evidence of consciousness of guilt, and their probative value was not outweighed by the danger of unfair prejudice.

A.

Analysis

The appellant challenges only the instruction from the caller that he "need[ed]" the person he called to put a "bug in" N.'s ear and convey that "she need not come to court." Therefore, we will focus our analysis on these utterances.

i. Proceedings Below

During an off-the-record, in-chambers conference held on the morning of the second day of trial, the court and counsel discussed the admissibility of the recorded jail call. Objections were raised regarding the admission of the recording due to its prejudicial content. The court instructed the State to redact certain parts of the recording. However, the court determined that the remaining portions of the recording were relevant as evidence of a consciousness of guilt:

> [THE COURT:] With regard to the jail call, we did have discussions back in chambers with regard to the State's desire to introduce one specific jail call. I think from what? September 18th?
>
> [THE STATE]: Yes, Your Honor.
>
> THE COURT: All right. I have listened to the jail call . . . that [the State] has proposed. I have heard the objections from [d]efense [c]ounsel. I am allowing the call with two redactions, which I have indicated back in chambers, and I believe the State understands.
>
> The redactions are specifically because I believe that those points, when those two statements are made, that it becomes more prejudicial than probative. Although the rest of the phone call I am admitting, over the [d]efense[']s] objection, finding that it is in fact probative of a consciousness of guilt that the State intends to argue at that point in time.

The court then asked the parties whether they had anything to add. Although the record is not entirely clear, it appears that defense counsel hinted at a hearsay objection,

arguing that the hearsay exception for admissions by a party-opponent did not apply. In addition, defense counsel contended that the admission of the recording was irrelevant and more prejudicial than probative:

> [W]ith respect to the jail call, . . . it contains, in our view, no admissions. Mr. Pack is not charged with attempting to influence a witness, obstruction of justice or anything of the like . . . in this proceeding, and we believe it is, on the whole, more prejudicial than probative and has in fact, in our view, no probative value.
>
> So[,] understanding the [c]ourt's ruling, those were the bases for our objection to . . . any portion of the jail call coming in.

The court reiterated that it would admit the redacted call, explaining that the unredacted remainder of it was probative.

Later, the prosecutor called the lead investigator to authenticate the redacted recording. After confirming that the investigator had listened to the recording, the prosecutor asked the investigator to "describe who the caller was[.]" Defense counsel objected, citing a lack of foundation. The prosecutor proceeded to lay a foundation for the investigator's identification of the caller as the appellant. The investigator testified that she had reviewed the body camera footage collected by the police and listened to the appellant's voice in that footage. She also testified that she listened to the recorded jail call, which came from the appellant's account.

Another bench conference followed, during which the prosecutor argued that the recording was sufficiently authenticated. The prosecutor proffered that the investigator would testify that the caller's voice was consistent with that of the appellant. In addition, the prosecutor explained that voice recognition was not the only method to authenticate the

call. The prosecutor asserted that the recording was also adequately authenticated by other information: (1) evidence that it had been made from the appellant's jail account, (2) a proffer that the call was a certified business record,[4] and (3) the content of the conversation, which included references to N. and others known to the appellant. The court admitted the jail call over defense counsel's objection and permitted the State to play the redacted call for the jury.

During its closing argument, the State replayed the redacted call for the jury. In anticipation of doing so, the State remarked:

> Now there was a recorded phone call that was made by [the appellant], or at least that would be what I would suggest. I know it was hard to hear the first time. I will play it again, and you can play it as many times as you need to.
>
> But before I play it, I will ask you to listen out for putting a bug in [N.]'s ear and asking her not to come to court.

After playing the recording, the State argued that the appellant made the call to avoid having N. come to court for his own "self-preservation."

ii. The Instruction Was Admissible as a Statement by A Party-Opponent.

"'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). "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a).

[4] The prosecutor had a certification of business records from the jail for the recording but chose not to use it for unspecified reasons.

What constitutes an "assertion" is not defined in the rule, and the definition is left "to development in the case law." *McClurkin v. State*, 222 Md. App. 461, 480 (2015) (citations omitted). In determining what qualifies as an "assertion," we examine not just "the declaration's literal contents," but also "the implications or inferences contained within or drawn from an utterance." *Id.* (citation omitted).

The State does not dispute that the utterances in question are hearsay. Indeed, the prosecutor introduced the call to encourage the jury to infer that the appellant was urging someone to tell N. not to come to court to testify against him. The implied assertions were that he was guilty of the charges against him, and therefore, they were hearsay. *See id*. at 479–83 (holding that jailhouse call made by the defendant, instructing the person whom he called to get someone to "holler" at and "put the pressure" on the victim to change his story, was an implied, inculpatory assertion and therefore hearsay).

Instead, the State tacitly concedes that the utterances are hearsay but argues they were admissible under the hearsay exception for a statement by a party-opponent. *See* Md. Rule 5-803(a)(1) (providing that "[a] statement that is offered against a party and is . . . [t]he party's own statement" is not excluded by the hearsay rule). The appellant claims that "the prosecutor did not attempt to, or actually establish on the record, a factual basis substantial enough to support the admission of the recorded telephone call" under that

exception.[5] The State interprets the appellant's argument to mean that the prosecutor failed to adequately authenticate the recorded call as having been made by the appellant.

The appellant's argument regarding the lack of "factual basis" to support admission under Rule 5-803(a) was limited to one sentence and was unsupported by any caselaw. "[W]here a party initially raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question . . . ." *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457–58 (1979). Furthermore, a contention can be deemed waived if an appellant in its brief raises an argument but cites no authority for its position. *Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument was "completely devoid of legal authority" (citation omitted)); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (failure to provide legal authority to support contention waived that contention). As we have advised, "[i]t is not our function to seek out the law in support of a party's appellate contentions." *Anderson*, 115 Md. App. at 578. It is unclear from the inadequate briefing whether the appellant is arguing that the lack of a factual basis for the exception concerning statements by a party-opponent relates to an authentication issue. Instead of declining to address the matter, we will exercise our discretion to address the argument, consistent with the State's interpretation.

[5] The appellant extends this argument to the prosecutor's reliance on the business records exception (Rule 5-803(b)(6)). However, the State concedes that the prosecutor did not attempt to admit the recorded call under this exception. Therefore, we do not need to address the appellant's argument on this matter.

Maryland Rule 5-901(a), governing the authentication of evidence, provides that authentication, a condition precedent to admissibility, "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The Rule sets forth a non-exhaustive list of ways evidence may be authenticated, including:

> (1) Testimony of Witness With Knowledge. Testimony of a witness with knowledge that the offered evidence is what it is claimed to be.
>
> * * *
>
> (4) Circumstantial Evidence. Circumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be.
>
> (5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker.
>
> (6) Telephone Conversation. A telephone conversation, by evidence that a telephone call was made to the number assigned at the time to a particular person or business, if
>
> > (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or
> >
> > (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
>
> * * *
>
> (9) Process or System. Evidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result.

Md. Rule 5-901(b).

Telephone conversations are admissible if direct or circumstantial evidence is presented "to establish the identity of the other person to the conversation." *Knoedler v. State*, 69 Md. App. 764, 773 (1987) (citation omitted). We stated that "[s]uch

authentication can be found either from evidence that the witness was familiar with and recognized the voice of the alleged caller, or, in the absence of such recognition, 'sundry circumstances (including other admissions and the like) may suffice.'" *Id.* (citation omitted).

"Sundry circumstances" can include a broad array of situations. In Maryland, the appellate courts have held that when the identity of a speaker in a telephone call is in question, authentication may be established where the content of the recording itself may corroborate the identity of the speaker. *See, e.g.*, *id.* at 773–74 (where "the conversation revealed that the caller had knowledge of facts that only he would be likely to know"); *Basoff v. State*, 208 Md. 643, 649 (1956) (telephone conversation was properly authenticated where it corroborated other facts elicited at trial to show identity); *Ford v. State*, 11 Md. App. 654, 657 (1971) (a telephone conversation was properly authenticated where the parties discussed mutual acquaintances in an area where they once met briefly and the purchase and quality of illicit drugs, which was the subject of the prosecution).

"[T]he burden of proof for authentication is slight, and the court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so." *Johnson v. State*, 228 Md. App. 27, 59 (2016) (citation omitted).

We are persuaded that the recorded call was properly authenticated as having been made by the appellant. While the investigator did not explicitly testify that she recognized the voice on the call as that of the appellant, she did confirm that the account from which

the call originated belonged to the appellant. Furthermore, the content of the call supported the identification of the caller as the appellant. The pre-recorded greeting identified the caller as "Juan," and during the conversation, reference was made to N. by first name while discussing the appellant's upcoming trial. Under the slight burden of proof required for authentication, we are persuaded that the court determined that the recorded call was properly authenticated as being made by the appellant.

As for the exception to the rule against hearsay for statements by a party-opponent, the appellant does not seriously contest its application. The call was unquestionably "offered against" the appellant. Accordingly, we hold that the call was admissible under the hearsay exception for statements by a party-opponent.

iii. The Call Was Relevant, and the Danger of Unfair Prejudice Did Not Outweigh Its Probative Value.

Quoting Maryland Rule 5-401, the appellant argues that "the statement attributed to [him] was irrelevant because it did not have '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[.]'" He further contends that, under Rule 5-403, any probative value provided by the recording's admission was outweighed by the danger of unfair prejudice because it "tended to portray [him] in a negative light." Again, the argument is not adequately briefed; the appellant does not elaborate on these arguments or cite any caselaw to support them. Notwithstanding the deficiency, we exercise our discretion and address the arguments.

Relevant evidence is "evidence having 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. Relevant evidence is generally admissible. *See* Md. Rule 5-402. But a trial court may exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "An appellate court reviews without deference a trial court's conclusion as to whether evidence is relevant." *Ford v. State*, 462 Md. 3, 46 (2018). "An appellate court reviews for abuse of discretion a trial court's determination as to whether evidence is inadmissible under Maryland Rule 5-403." *Id.*

"Consciousness of guilt evidence is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind, and state of mind evidence is relevant because the commission of a crime can be expected to leave some mental traces on the criminal." *Id.* at 47 (citation omitted). "Conduct typically argued to show consciousness of guilt includes flight after a crime, escape from confinement, use of a false name, and destruction or concealment of evidence." *Thomas v. State*, 372 Md. 342, 351 (2002). In addition, "[e]vidence of threats to a witness, or *attempts to induce a witness not to testify* . . . is generally admissible as substantive evidence of guilt" where "the threats or attempts can be linked to the defendant . . . ." *Armstead v. State*, 195 Md. App. 599, 643 (2010) (emphasis added) (citation omitted).

The circuit court did not abuse its discretion in admitting the call because it was relevant to show consciousness of guilt. The discernible parts of the recorded call

demonstrate that the appellant wanted to persuade N. not to come to court. A reasonable inference that the jury could draw was that he wanted to prevent her from testifying against him regarding the charges.

In addition, we are not persuaded that the court abused its discretion in failing to exclude the call under Rule 5-403. Although the substance of the call was prejudicial, it was not "unfairly" so, because it did not improperly encourage the jury to disregard the evidence or decide the case on an emotional basis. *See Burris v. State*, 435 Md. 370, 392 (2013) (evidence is considered unfairly prejudicial when "it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged" (alteration in original) (citation and quotation marks omitted)); *Weiner v. State*, 55 Md. App. 548, 555 (1983) ("The evidence offered should be excluded if the factual scenario may unduly arouse the jury's emotions of prejudice, hostility or sympathy."). Accordingly, the court did not abuse its discretion in ruling that the probative value of the recorded call was not substantially outweighed by the danger of unfair prejudice.

II.

Sufficiency of the Evidence

The appellant argues that the evidence was legally insufficient to sustain the appellant's two convictions for first-degree assault for two reasons. First, he contends that the prosecution failed to sufficiently prove that a strangulation even took place. He explains that although N. testified that strangulation occurred on two occasions resulting in injuries,

neither the Royal Farms employee nor the school's social worker who testified mentioned seeing any of N.'s injuries. Second, he argues that there was insufficient independent evidence to corroborate N.'s account of the strangulation events.

The first-degree assault statute prohibits a person from committing an assault "by intentionally strangling another." Md. Code. Ann., Crim. Law ("CL") § 3-202(b)(3) (2002, 2021 Repl. Vol.). "Strangling" means "impeding the normal breathing or blood circulation of another person by applying pressure to the other person's throat or neck." CL § 3-202(a).

The question of the sufficiency of the evidence based on the two reasons cited by the appellant above is not preserved for our review. Maryland Rule 4-324(a) provides in pertinent part:

> A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. *The defendant shall state with particularity all reasons why the motion should be granted.*

(emphasis added). "The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Whiting v. State*, 160 Md. App. 285, 308 (2004).

Although the appellant moved for a judgment of acquittal at the conclusion of all the evidence, he did not state as grounds for his motion the alleged insufficiency of the evidence grounds he now raises on appeal. Defense counsel acknowledged that there was testimony about strangulations, and whether they occurred was a matter for the jury to

decide. Instead, defense counsel argued that there was insufficient evidence of intent to cause serious bodily injury as defined by the statute:

> THE COURT: . . . Do you want to make any arguments with regard to the choking inciden[t]s? I mean, I know [N.] testified as to choking. I think there were two specific instances that she testified to. There are two specific charges and lesser included that relate to that.
>
> [DEFENSE COUNSEL]: So I would argue for each that the State has to show the intent to cause serious bodily injury under this theory of first-degree assault. She did testify that -- I believe she testified that she was choked to unconscious[ness] on each occasion . . . and then that the incident stopped. I would argue that the evidence is insufficient to show an intent to cause serious bodily injury *as it is defined in the jury instruction under that first-degree assault theory*. So that is the argument I would make . . . with respect to each first-degree assault charge.
>
> THE COURT: All right, and I get that. I think there is sufficient evidence in the light most favorable to the State with the strangulation. Any time that someone attempts a strangulation is sufficient for serious bodily injury as that is defined.

(emphasis added).

Even if preserved, we would find no merit in the appellant's contentions. To determine if the State has provided sufficient evidence to sustain a conviction, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). An appellate court views "not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the State." *Id.* at 185–86. "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to

assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Tracy v. State*, 423 Md. 1, 12 (2011).

The underlying premise of the appellant's contentions on appeal is that there was insufficient evidence corroborating N.'s accounts of the two incidents of strangulation. Specifically, no one else testified to witnessing the strangulations, and neither the Royal Farms employee nor school's social worker provided testimony regarding N.'s injuries. However, it "is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction." *Archer v. State*, 383 Md. 329, 372 (2004) (Harrell, J., dissenting); *see Branch v. State*, 305 Md. 177, 183 (1986) ("Identification by the victim is ample evidence to sustain a conviction . . . . The testimony of a victim, unlike that of an accomplice, needs no corroboration." (quotation marks and internal citations omitted)). Corroboration or lack thereof goes to the weight, not to the sufficiency of the evidence. *See Owens v. State*, 170 Md. App. 35, 103 (2006) ("[A] witness's credibility goes to the weight of the evidence, not its sufficiency."). The appellant's arguments are "simply an invitation to reweigh the evidence, which we cannot do." *Winston v. State*, 235 Md. App. 540, 576 (2018). For the reasons stated, we conclude that the evidence was sufficient to support the convictions for first-degree assault.

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