Circuit Court for Montgomery County
Case No. 133020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2253

September Term, 2018

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KITTRELL BUDD

v.

STATE OF MARYLAND

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Wright,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Raker, J.

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Filed: October 29, 2019

Appellant Kittrell Budd was convicted by a jury in the Circuit Court for Montgomery County of attempted first-degree murder and violation of a protective order. Appellant presents the following questions for our review:

> "1. Did the trial judge err by not giving defense counsel's requested jury instruction regarding proof of intent?
>
> 2. Did the court below err by denying Appellant's pre-trial motion to sever the charges?
>
> 3. Did the trial judge abuse discretion by permitting the prosecution to introduce evidence of a text conversation contained in State's Exhibit #85?
>
> 4. Is the evidence legally insufficient to sustain Appellant's conviction of attempted first degree murder?"

Finding no error, we shall affirm.

## I.

Appellant was indicted by the Grand Jury for the Circuit Court for Montgomery County on charges of attempted first-degree murder and violation of a protective order. The jury convicted him of both charges. The court sentenced him to life imprisonment on the count of attempted first-degree murder and "generally suspended" the sentence on the other count.[1]

We state the following facts as set forth at trial. At around 6:30 a.m. on December 2, 2017, Alissa Jewell, appellant's then-girlfriend, ended her relationship with him upon

[1] The court did not specify a sentence on the count of violation of a protective order.

discovering, as she was driving appellant to work, that some money was missing from her wallet and suspecting that appellant took it the night before. At around 9 a.m., appellant returned to Ms. Jewell's apartment, where she lived with her mother, two sisters, and appellant, to retrieve his belongings. Appellant told Ms. Jewell and her family that "you all can catch some smoke." Ms. Jewell testified at trial that appellant had previously used the slang phrase "catch some smoke" and explained to her that it meant to get a gun and kill.

After Ms. Jewell drove appellant with his belongings to his father's apartment, appellant dragged her inside the apartment, locked the door, took her cell phone and keys, and told her that she was not going anywhere. Eventually, appellant led Ms. Jewell out of his father's apartment and demanded to return to her apartment with her. She refused. As she walked away from appellant, appellant came from behind her, put his hand over her mouth, and dragged her back to her car. Opening the car's door from the driver's side, appellant threw Ms. Jewell's phone and keys onto the passenger's seat and pushed her into the driver's seat. Ms. Jewell crawled over to the passenger seat, grabbed her phone and keys, opened the door, and ran to a nearby CVS store. There, she encountered and spoke with a police officer, who advised her to get a protective order. The police officer went with Ms. Jewell to retrieve her car, and she returned home in her car. At 11 a.m., Ms. Jewell went to the District Court to obtain a protective order against appellant, and the court issued the order.

Upon returning to her apartment complex in the afternoon, Ms. Jewell saw that

appellant had returned and was sitting on a friend's porch in the same apartment complex. At 4:30 p.m., Ms. Jewell left to work her 5 p.m. to midnight shift and saw that her car tire had been slashed. Her cousin subsequently drove her to work. At 5:16 p.m., appellant was served with Ms. Jewell's protective order, as shown in the footage from the body camera of the serving police officer.

Returning home after work in her car, which was fixed and brought to her work by her brother and mother, Ms. Jewell walked to her apartment complex's security booth at the opposite end of the complex and advised the guard on duty of her protective order against appellant. At 12:30 a.m. on December 3, Ms. Jewell was speaking to her mother on her cell phone and walking back to her apartment when she spotted appellant hiding by her unit's stairwell. She told her mother "I think that's him," meaning appellant. Ms. Jewell's mother called 911.

Ms. Jewell started running, and appellant chased her. Ms. Jewell testified that appellant pushed her and that she fell face first on the ground in the middle of the street. According to Ms. Jewell, her height was 5'3" and her weight was ninety-five pounds, while appellant was 5'11" and 220 pounds. She testified that she thought that appellant, who was then on top of her, was punching her, but realized, when she saw a knife in his hand, that he was also stabbing her. A neighbor heard her screams, came out, saw a man who was "considerably larger" than the woman he was attacking, and yelled out "what the f*** are you doing." Appellant dropped the knife and ran away. Bleeding from her head, Ms. Jewell made it to her apartment and told her sister that "[appellant] just stabbed me." Her

sister again called 911.

When police officers responded to the 911 calls, they found blood on the sidewalk, inside the apartment complex, and inside Ms. Jewell's apartment. They saw Ms. Jewell with a "massive swollen" left cheek, barely able to breathe and going in and out of consciousness. They retrieved the knife and a cell phone later determined to belong to appellant. The paramedic who treated Ms. Jewell designated her a "priority two trauma patient" with injuries that "may progress to being . . . life-threatening within an hour or two hours." The paramedic directed the ambulance to take Ms. Jewell not to the closest hospital but to a different one with a higher-level trauma center certification.

Ms. Jewell was transported to the hospital and treated for multiple stab wounds to her head, neck, face, and arm; broken bones in her cheek; a fractured jaw; a pinched nerve in her neck; and bruises and scrapes. Ms. Jewell testified at trial that she had lasting injuries, including nerve damage at the back of her head and the inability to fully open her mouth. Appellant was arrested the day after the incident.

Before trial, appellant moved to sever his charges of attempted first-degree murder and violation of the protective order, seeking separate trials. The court denied the motion, explaining as follows:

> "THE COURT: So, the Court does undertake the analysis and, as *McKnight* [*v. State*, 280 Md. 604 (1977)] indicates, and [*State v.*] *Faulkner*[, 314 Md. 630 (1989)], the Court has to first determine whether the evidence fits within one or more of the exceptions under (b) of 5-404, other crimes, wrong, or acts.
>
> And, in this instance, I believe that . . . [Ms. Jewell's] knowing [appellant], how it is she came to get a protective order in some

limited fashion, and what happened on December 3rd, would all be, certainly, of the same[.] I agree with the State that *these events are in such close proximity to one another that one cannot be explained without reference to the other, and that the evidence of the seeking and obtaining of an interim protective order may[ ]be evidence that could go to motive, opportunity, intent, preparation, identity, or any one other of those exceptions* in [*Faulkner*]. And, are of such close proximity given the fact . . . that [appellant] had been served with the interim protective order at 5:16 p.m. on December 2nd. And, this crime is alleged to have occurred . . . on December 3rd at 12:40 [a.m.], which is about seven hours later . . . and, certainly, could be evidence of other crimes, of those . . . exceptions. So, from that standpoint, I do find that the evidence does meet that admissibility standard.

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In looking at this process, the Court has to determine, with mutual admissibility, the extent that evidence and testimony in one charge is admissible in the others and weigh the potential prejudice to the defendant, and determine if the admissibility of the evidence outweighs any unfair prejudice.

Certainly, evidence is prejudicial whatever form it is being offered in. If there is an exception that applies, as I think 5-404(b) does, the Court still has to look at whether that is outweighed. *This evidence would be coming in in both cases as it relates to the elements of each offense, and it's essentially the same evidence*.

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The next step in the three-prong analysis is to determine whether the accused's involvement in the other crimes is established by clear and convincing evidence. In this case, the State would be seeking to offer the interim protective order, as I understand it, as it relates to the motive, or opportunity, or intent of the attempted first-degree murder and also argues to the Court that it demonstrates clear and convincing evidence because she sought from a judicial, neutral magistrate the issuance of this interim protective order.

> And I believe the issuance of that protective order does, certainly, create a circumstance of clear and convincing evidence to meet the second prong for it being admissible on the reliability standard.
>
> So, that takes me to the third prong which is to consider whether or not the prejudice to [appellant] is outweighed by any probative value of the evidence[.] Certainly, [appellant] has the opportunity to cross-examine the witness. It will be the same witness.
>
> He would have the opportunity to pro[v]e as to her veracity, her memory, her knowledge of these events, and to flesh that all out. And, he'd have that opportunity once or twice depending if it was severed.
>
> *I don't think that, while I recognize it's prejudicial, I don't believe, as the facts are laid out for this motion, that it creates a circumstance where it is overly prejudicial to his inability [sic] to have a fair trial.* I think he certainly is entitled and would have the same exact ability to cross-examine the witnesses as to one charge as to the other.
>
> ***
>
> So, the motion to sever counts is denied."

At trial, the State sought to admit into evidence Exhibit #85, which included two sets of text messages between appellant and a person identified in appellant's phone as "Bra Arron Lil." In the first set of text messages, Lil asked appellant on December 1, "U want to buy a joint 350," and appellant replied with "Yeah" and "What kind." Lil wrote back "Ruger 10/45" and "22 rifle rounds holds 22." Appellant replied "Yeah" and "Send me a pic."

In the second, partially redacted set of text messages, starting at 12:16 p.m. on December 2, appellant wrote to Lil, who the State claims lived in the same apartment complex as Ms. Jewell, "You see the police today" and "Go outside [a]nd see if you see police." Appellant sent Lil another text at 6:42 p.m. the same day, which read "I'm not allowed around [th]ere." He then sent a text at 12:11 a.m. the same night that read "I'm outside."

Over appellant's objection that the evidence was more prejudicial than probative, the court admitted both sets of text messages as follows:

> "THE COURT: This is a discussion about a gun between the defendant hours before the complaining witnesses feels the need, and the testimony indicates, to seek an interim protective order because it's on the weekend and it is hours before she is assaulted with a knife by the person she describes to be the defendant from her testimony, her boyfriend, or recently not boyfriend, hours before, and all of the events she's testified to and his reaction to her ending their relationship.
>
> And I, let me first say, I agree with you, [defense counsel, the first set of text messages] is very prejudicial evidence[. T]o suggest that . . . the prejudice outweighs the probative value[, t]here I disagree with you. I believe . . . it is prejudicial and all evidence is prejudicial. *With regard to this evidence, it certainly could go to the issue that the State is required to prove of premeditation and taking affirmative steps towards the planning or the carrying out of an intent to kill with premeditation and deliberation. And although prejudicial certainly to your client, I believe it is relevant to the charges he stands indicted for and is in such close proximity in time to the allegation and, again, using the timeline phrase of when these events transpired leading up to her injuries being sustained, I believe it is admissible for those reasons.*
>
> ***

> For the same reasons I've already indicated, I think *[the second set of text messages] certainly does go to evidence of opportunity and coming to the complex after he's been served with the protective order that was read to him . . . . I believe for the same reasons it's relevant and certainly, again, prejudicial, but not overly to the point of not providing the defendant with a fair trial* as it goes to the element of whether or not there's been a Count 2, a violation of the protective order and also to opportunity to commit the crime that he's charged with, an attempted first-degree murder."

At the end of the State's case, defense counsel moved for judgment of acquittal, challenging the State's proof of an intent to kill. The court denied the motion. At the end of the defense's case, defense counsel renewed his motion based on the same argument as before, and the court denied the motion again.

After the close of all the evidence, the court gave the Maryland pattern jury instruction for attempted first-degree murder, which reads as follows:

> "Attempted first degree murder is a substantial step, beyond mere preparation, toward the commission of murder in the first degree. In order to convict the defendant of attempted murder in the first degree, the State must prove:
>
> (1) that the defendant took a substantial step, beyond mere preparation, toward the commission of murder in the first degree;
>
> (2) that the defendant had the apparent ability, at that time, to commit the crime of murder in the first degree; and
>
> (3) that the defendant willfully, and with premeditation and deliberation, *intended to kill* (name).
>
> Willful means that the defendant *actually intended to kill* (name). Deliberate means that the defendant was conscious of the *intent to kill*. Premeditated means that the defendant thought about the *killing* and that there was enough time,

> though it may only have been brief, for the defendant to consider the decision whether or not *to kill* and enough time to weigh the reasons for and against the choice."

Maryland Criminal Pattern Jury Instruction ("MPJI-CR") 4:17:13 (emphasis added).

Defense counsel requested to add to the pattern jury instruction the following two sentences from *State v. Earp*, 319 Md. 156, 161–67 (1990): "When an attempted murder is charged, the State must show a specific intent to kill. An intent to commit grievous bodily harm will not suffice." The court declined, ruling as follows:

> "THE COURT: Well, the instruction is pretty clear as it lays out the elements of the crime. In element three, that the defendant willfully and with premeditation and deliberation intended to kill, and then it defines willful meaning that the defendant actually intended to kill. Deliberate means that the defendant was conscious of the intent to kill.
>
> Premeditated means that the defendant thought about the killing and that there was enough time, though it may only have been brief, for the defendant to consider the decision whether or not to kill and enough time to weigh the reasons for and against the choice.
>
> So it doesn't speak anything about grievous bodily injury. It says kill, and I think we can all agree that kill means to end one's life. It doesn't mean grievous bodily injury. So it has defined all of the elements of first degree, which has the premeditated aspect.
>
> ***
>
> And so I think [*Earp* was decided] before the pattern instructions were updated, I believe, because this is 1990.
>
> ***
>
> The pattern jury instruction that exists today in 2018 specifically deals with the definition of the elements of

> attempted first degree murder and makes it very clear following the case law that the State is required to prove beyond a reasonable doubt an intent to kill, not anything else.
>
> So I'm not going to add anything to the pattern instruction because I think the pattern instruction is in keeping with the case law, including *Earp*[.]"

The jury convicted appellant of both charges, and this timely appeal followed.

II.

Before this Court, appellant argues that the trial court erred in denying his request to supplement the pattern jury instruction on attempted first-degree murder. Appellant argues that an explicit clarification on the difference between the intent to merely inflict grievous bodily harm and the intent to kill was not fairly covered elsewhere in the jury instruction.

Appellant argues that the court erred by denying appellant's pre-trial motion to sever his charges of attempted murder and violation of the protection order. Appellant acknowledges a trial court's discretion to sever or join offenses at trial based on considerations of balance between likely prejudice to the defendant on the one hand and economy and efficiency in judicial administration on the other hand. Appellant argues, however, that the joinder was unduly prejudicial because (1) the nature of a protective order is generally known for physical abuse or stalking and (2) the basis for the protective order against him was "something that had nothing to do with the attempted murder charge." Appellant describes the joinder as essentially "bad acts" evidence that does not fall under

an admissible exception.

Appellant argues that the court abused its discretion by permitting the State to introduce evidence of the two sets of text conversations. As to the text conversation about a gun, appellant argues that the court abused its discretion in admitting the evidence because it was irrelevant and unduly prejudicial—his "discussion about a gun the day before cannot rationally be connected to Ms. Jewell's break-up or the service of the protective order on [a]ppellant because it preceded both events." Appellant further argues that the conversation contained hearsay because the testimony was admitted for its substantive truth, the State did not advance an exception to the rule against hearsay, and the court did not specify an exception.

As to the text conversation about the apartment complex, appellant asserts that the court erred in admitting it because it is irrelevant. Even if relevant, appellant argues that it was inadmissible hearsay because neither the State nor the court identified a hearsay exception under which this evidence could properly be admitted.

Lastly, appellant argues that the evidence was legally insufficient to sustain his conviction of attempted first-degree murder. Appellant argues that the State failed to prove an intent to kill because (1) the most severe injuries were delivered by his push or punches as opposed to by knife; (2) Ms. Jewell believed initially that appellant was punching her; and (3) it appeared to a witness that appellant was punching Ms. Jewell. Appellant maintains that he "had the opportunity to [kill Ms. Jewell] and didn't do it."

The State argues that the trial court correctly declined appellant's supplement to the

pattern jury instruction on attempted first-degree murder because the pattern jury instruction fairly covered the element of the offense and appellant's proposed supplement was superfluous by merely identifying one of a multitude of mental states that does *not* satisfy the intent to kill requirement.

The State argues that the court did not abuse its discretion in declining to sever appellant's two charges because evidence related to each charge was mutually admissible—(a) they occurred in very close temporal proximity such that one crime cannot be explained without reference to the other and (b) the evidence related to the protective order was relevant to appellant's state of mind and necessary to show premeditation, motive, and an intent to kill. The State argues that the judicial economy gained by trying these charges together outweighed whatever prejudice, if any, that might result from the joinder.

Regarding the first text conversation about a gun, the State argues that it was relevant in giving the necessary context and credence to appellant's threat to Ms. Jewell and her family that they could "catch some smoke"—an expression that Ms. Jewell testified appellant had used before and explained to her as meaning to kill with a gun. The State argues that appellant's conversation about the gun hours before he made the threat indicates his state of mind at the time of the threat because it shows his interest in obtaining a gun. The State maintains that this evidence was not *unduly* prejudicial.

As for appellant's hearsay challenge of the text messages about the gun, the State argues that the text messages *from* appellant to Lil, if hearsay, fall under the party-opponent

exception to the hearsay rule. Alternatively, the State argues that the text messages from and *to* appellant are not hearsay because they were not "assertions" but rather "verbal acts" or "verbal parts of acts," introduced not to prove the truth of the matter asserted but rather to demonstrate the *effect* of Lil's text messages on appellant or appellant's *interest* in purchasing a gun. *See Garner v. State*, 414 Md. 372, 376 (2010) (holding that the statements of the offeror and offeree in a phone call about drugs were "verbal acts" and hence non-hearsay). As the State put it, "when someone offered to sell [appellant] a gun, [appellant] indicated that he was interested and asked the seller to describe what kind it was and to send him a picture."

Regarding the second text messages about the apartment complex, the State argues that they are relevant to demonstrate that appellant was in Ms. Jewell's apartment complex at the time of her attack, knowingly in violation of his protective order. The State argues that the messages sent by appellant fall under the party-opponent exception to the hearsay rule.

Lastly, the State argues that there was sufficient evidence for the jury to infer that appellant intended to kill Ms. Jewell. Given that he threatened to "smoke" her, waited in her apartment complex to ambush her with a knife, shoved and punched her, and stabbed her in her head, face, and neck before he was interrupted by a neighbor, the State argues that a rational trier of fact could have found an intent to kill.

III.

We hold that the trial court did not err in declining appellant's requested supplement to the pattern jury instruction on attempted first-degree murder, which sought to distinguish further between the intent to merely inflict grievous bodily harm and the intent to kill. We review a trial court's decision to give or decline a requested jury instruction for abuse of discretion. *Nicholson v. State*, 239 Md. App. 228, 239 (2018), *cert denied*, 462 Md. 576 (2019). Upon the request of any party, a trial court is required to "instruct the jury as to the applicable law and the extent to which the instructions are binding." Md. Rule 4-325(c).[2] Maryland law is clear, however, that the court need not give a requested instruction if it is "fairly covered" elsewhere in the instruction to be given. *Id.*; *Gunning v. State*, 347 Md. 332, 348 (1997).

Appellant's requested language from *Earp*, 319 Md. at 161–67, was fairly covered in the pattern instruction's third element "that the defendant willfully, and with premeditation and deliberation, *intended to kill* [the victim]." MPJI-CR 4:17:13 (emphasis added). The instruction further elaborated that "willful means that the defendant *actually intended to kill*" the victim. *Id.* (emphasis added). Thus, the instruction adequately stated the law of attempted first-degree murder and the required willful state of intent.

[2] Maryland courts strongly favor the use of pattern jury instructions. *Minger v. State*, 157 Md. App. 157, 161 n.1 (2004); *Sydnor v. State*, 133 Md. App. 173, 184 (2000). Generally, pattern jury instructions suffice, and trial courts may rely on them. *Bayne v. State*, 98 Md. App. 149, 160 (1993).

Second, we hold that the court did not err in denying appellant's pre-trial motion to sever his charges of attempted murder and violation of the protection order. We review a trial court's decision to permit or deny a joinder of charges under the abuse of discretion standard. *Conveyers*, 345 Md. 525, 556 (1997).

Maryland Rule 4-253 permits the joinder of multiple charges against a single defendant to save time and money by avoiding unnecessary additional trials. *Id.* at 552; *Winston v. State*, 235 Md. App. 540, 557 (2018). If there are (1) mutual admissibility of evidence concerning the offenses and (2) overriding interest in judicial economy, (3) without undue prejudice to the defendant, then a joinder is appropriate. Md. Rule 4-253(c); *Conveyers*, 345 Md. at 553.

To establish mutual admissibility of evidence, a trial court determines whether, if trials were to occur separately, evidence from the "other crimes" would be admissible under one of the "other purposes" exceptions to the general prohibition against admitting "other crimes evidence" in the Maryland Rules of Evidence.[3] *Conveyers*, 345 Md. at 553. "Other crimes" evidence may be admitted if it tends to establish *a common scheme or plan*,

[3] Rule 5-404(b) states as follows:

> "**Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, 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."

or if crimes are so related to each other that proof of one tends to establish the other, or if the offenses are *so connected in time or circumstances* that they form one transaction and cannot be fully explained without the other. *Tichnell v. State*, 287 Md. 695, 711–12 (1980).

The court found that appellant's charges "go hand-[in]-hand with one another"—*i.e.*, the "events [were] in such close proximity to one another that one cannot be explained without reference to the other"—and that the protective order evidence "could go to motive, opportunity, intent, preparation, identity, or any one other [six] of those exceptions[.]" The court concluded that the evidence related to the protective order "would be coming in in both cases as it relate[d] to the elements of each offense, and it's essentially the same evidence." Because that evidence was mutually admissible, not only did judicial economy favor holding one trial for crimes stemming from a single incident, but appellant was also not unduly prejudiced by the joinder. *See McKnight v. State*, 280 Md. 604, 610 (1977) ("Where evidence of one crime would be admissible at a separate trial on another charge, a defendant will not suffer any additional prejudice if the two charges are tried together."). Thus, the court did not abuse its discretion in joining the charges.

Third, we hold that the court did not abuse its discretion in permitting the State to introduce both sets of text messages contained in Exhibit #85. We review a trial court's determination on admissibility of evidence, based on balancing any probative evidentiary value with any danger of prejudice of the evidence, for abuse of discretion. *Conveyers*, 354 Md. at 176. As for hearsay, a trial court has no discretion to admit such evidence

unless it falls under a hearsay exception. Md. Rule 5-801(c); *Stoddard v. State*, 389 Md. 681, 688 (2005).

Evidence is relevant and potentially admissible if it tends to "make the existence of any fact that is of consequence to the determination of the action more probable or less probable." Md. Rule 5-401. Relevance is a relational concept—the test is whether, in conjunction with all other relevant evidence, the evidence in question tends to make the proposition asserted more or less probable. *Snyder v. State*, 361 Md. 580, 591–92 (2000). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Md. Rule 5-403. Hearsay, an out-of-court statement offered in evidence to prove the truth of the matter asserted, is not admissible unless it falls within one of the exceptions. Rules 5-801(c), 802–04.

As for appellant's text conversation about a gun, we agree with the State that it was relevant in substantiating a threat to Ms. Jewell and her family that they would "catch smoke"—appellant's slang phrase for killing with a gun—by showing that appellant had been actively looking into buying a gun shortly before making that threat. It gives context and credibility to the threat, showing appellant's state of mind prior to and during the attack on Ms. Jewell. Hence, it is relevant, and the court did not abuse its discretion in finding that its relevance outweighed any danger of prejudice.

In addition, we agree with the State that these text messages are not hearsay because they were offers and expressions of interest in a transaction and hence were "verbal acts" as opposed to assertions. *See Garner*, 414 Md. at 382, 384. We further agree with the

State's alternative argument that the incoming text messages to appellant were not hearsay because they were offered for their effect on appellant, *see* Md. Rule 5-801(c), and that the outgoing text messages by appellant were admissible under Md. Rule 5-803(a)(1), *i.e.*, the exception for statements by a party opponent.

As for appellant's text messages concerning the apartment complex, the court acted within its discretion in finding that they were relevant in supporting the State's theory that (1) the recipient of the text messages from appellant lived in Ms. Jewell's apartment complex; (2) appellant sought knowingly to violate the protective order by entering the apartment complex; and (3) appellant was present in the apartment complex near the time of the attack. Therefore, we hold that the trial court did not abuse its discretion in finding that the relevance of this evidence outweighed any danger of prejudice. Additionally, these text messages by appellant are not hearsay because they are statements by a party opponent and a present sense impression. *See* Md. Rule 5-803(a)(1), (b)(1).[4]

[4] Maryland Rule 5-803 provides hearsay exceptions as follows:

> "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
> (a) Statement by party-opponent. A statement that is offered against a party and is:
> (1) The party's own statement, in either an individual or representative capacity;
>
> ***
>
> (b) Other exceptions. (1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter."

Lastly, we hold that the evidence was legally sufficient to sustain appellant's conviction for attempted first-degree murder. When we review the legal sufficiency of evidence, we ask whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Taylor v. State*, 346 Md. 452, 457 (1997). We do not reweigh the evidence and instead examine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact beyond a reasonable doubt. *Id.* We view not just the facts, but all rational inferences that arise from the evidence in the light most favorable to the State. *Id.* at 458.

Viewing the evidence in the light most favorable to the State, we hold that a rational trier of fact could have found that appellant intended to kill Ms. Jewell. Appellant, who was significantly larger than Ms. Jewell, waited for her with a knife, ambushed her, and caused her severe injuries by pushing, punching, and stabbing her. Appellant argues that he did not attempt to kill Ms. Jewell because (1) the most severe injuries were delivered by his push or punches as opposed to by knife; (2) Ms. Jewell believed initially that appellant was punching her; and (3) it appeared to a witness that appellant was punching Ms. Jewell. We are not persuaded by this argument. That appellant punched her *in addition to* stabbing her with a knife in *her head, face, and neck*, among other places, does *not* mean that he did not intend to kill her. Ms. Jewell's stab wounds were severe enough that the paramedic who treated her designated her a "priority two trauma patient," which meant that she had injuries that "may progress to being . . . life-threatening within an hour or two hours."

Furthermore, that appellant was ultimately unable to acquire a gun and attacked Ms. Jewell with a knife instead does not negate the probative value of appellant's threat to "smoke" her. At the time he made the threat, he believed that he could obtain a gun. Because a rational trier of fact, viewing the evidence in the light most favorable to the State, could have found appellant's intent to kill Ms. Jewell beyond a reasonable doubt, we hold that the evidence was legally sufficient.

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