

Circuit Court for Charles County
Case No. C-08-CR-18-000368

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2969

September Term, 2018

ALLEN JEROME PRUE

v.

STATE OF MARYLAND

Meredith,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: December 13, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Allen Prue was convicted by a jury in the Circuit Court for Charles County of second-degree assault and reckless endangerment. Appellant presents the following question for our review:

“Did the lower court err in admitting other crime consciousness of guilt evidence at Mr. Prue’s trial?”

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Charles County on charges of attempted second-degree murder,¹ first-degree burglary (home invasion), third-degree burglary, fourth-degree burglary, first-degree assault, second-degree assault, and reckless endangerment. A jury convicted him of second-degree assault and reckless endangerment. The court sentenced appellant to a term of incarceration of ten years with all but eighteen months suspended for second-degree assault and ninety days concurrent followed by five years’ probation for reckless endangerment.

The following facts were set forth at trial. Appellant’s ex-girlfriend Tyeshia Harrison lived with their four children at 6174 Sea Lion Place in Waldorf. On April 8, 2018, an incident occurred that led Ms. Harrison to file assault charges against appellant. Six days later in the early morning of April 14, appellant broke into Ms. Harrison’s house. He apparently climbed on top of an outdoor air conditioning unit and then on top of an

¹ The State entered a *nolle prosequi* on this charge.

outdoor utility closet attached to the back of the house. Appellant then reached the roof outside of his children's second-story bedroom and ripped open the window screen.

Once inside of the house, appellant entered Ms. Harrison's bedroom and attacked her. He choked her and told her that he was angry with her for filing the assault charges because he would be "going away for fifteen years." Appellant stopped choking Ms. Harrison when she appeased him by saying that she loved him and would marry him.

Appellant remained in the house as the morning progressed. When appellant left Ms. Harrison's bedroom, Ms. Harrison text messaged her mother and sister that she needed help. Police arrived thereafter and knocked on the door. Ms. Harrison testified that appellant told her to tell the police to leave and that he followed her as she answered the door and told the responding officers that there was no problem. Officer Richard Logsdon testified that Ms. Harrison appeared distressed when she answered the door. Because of this, he and another officer remained on the property. A few minutes later, several people, including Ms. Harrison's parents, arrived at the house and pulled Ms. Harrison outside. Still on the scene, Officer Logsdon entered the house and arrested appellant.

In a pre-trial motion, the State offered as "consciousness-of-guilt" evidence that on September 29, 2018, two days before trial, appellant attempted to break into Ms. Harrison's house in the same manner as he did on April 14. The State argued that appellant was attempting to intimidate or prevent Ms. Harrison from testifying. Called by the State, Ms. Harrison testified that she switched bedrooms with her children after the April 14 break-in to prevent her children from opening the window for appellant if he tried to break in again. She further testified that she woke up at 5:30 am on September 29 and saw appellant climb

on top of the air conditioner and reach the roof outside of her window. She stated that she started screaming and called 911 as appellant fled. Officer Logsdon testified next that he responded to the 911 call and that Ms. Harrison told him that appellant tried to break into her house. He also testified to seeing mud and a fresh handprint on the air conditioning unit and damage to the gate leading to the backyard of the house.

The court ruled on the State’s motion and admitted testimony of the September 29 incident as evidence of appellant’s consciousness of guilt, reasoning as follows:

“First, the Court finds that there is clear and convincing evidence that the incident happened on September 29th, 2018, based upon Ms. Harrison’s demeanor, and delivery, and what she said.

In addition, Officer Logsdon indicated that he observed condensation on the [air conditioning] unit. He also indicated that he observed fresh damage to the gate. He was able to explain both as to how he made those observations and why he came to both of those conclusions.

Then, to be relevant, the evidence of post-crime conduct must satisfy the four inferences. One, from the defendant’s conduct, a desire to evade prosecution or conceal evidence.

This is not a situation in which the defendant just walked up to the door. The defendant had to climb onto an air conditioning unit, then onto a utility closet, then to touch the window.

The victim, Ms. Harrison, and the defendant have four children together, so the Court can make a finding that they know each other extremely well, and she recognized him when she saw him.

The second part is from a desire to evade prosecution or conceal evidence, consciousness of guilt. . . . Presumably, if there is a townhouse, there is a front door. There is no evidence that he went to the front door. . . .

And then the third analysis is from a consciousness of guilt, consciousness of guilt with respect to the charged offenses. Her testimony also supports the Court's finding. Also, that based upon his actions and how he did not go to the front door, he went to the window that he had gone to back in April.

Based upon that and all of [Ms. Harrison's] testimony, the Court does find that it was his consciousness of guilt with respect to the charged offenses.

And then, number four, from the consciousness of guilt with respect to the charged offenses, actual guilt. *And the law also provides that the evidence need not conclusively establish guilt, but rather that the proper inquiry is whether the evidence could support an inference that the defendant's conduct demonstrates a consciousness of guilt, and if so, the evidence is relevant and generally admissible.*

So, based upon her testimony, the Court finds that all of those have been satisfied. And then of course, the ultimate test, the last test, is whether or not the evidence is more probative than unfairly prejudicial.

And as the State indicated, based upon the facts of the case, based upon Ms. Harrison's testimony, *the Court finds that there is a heightened relevance, and as such, based upon the analysis, that evidence of what happened on September 29th, 2018 will come into evidence and will be allowed to be presented to the jury.*"

During Ms. Harrison's testimony at trial, defense counsel objected to her testimony of the September 29 incident, but the court overruled the objection. Other evidence presented at trial were Officer Logsdon's testimony as to how appellant entered and was

apprehended at Ms. Harrison’s house on April 14, three 911 calls related to the assault, and photographs of Ms. Harrison’s injuries taken the day of and one week after the assault.

Appellant was convicted and sentenced as stated above; this timely appeal followed.

II.

Before this Court, appellant argues that the court erred by admitting the September 29 incident as evidence of consciousness of guilt. According to appellant, the court made two errors. First, he argues that the court erred by inferring from his act of climbing to Ms. Harrison’s window on September 29 that he was “acting to influence a witness’s testimony to his benefit or otherwise evade prosecution.” Appellant maintains that this conduct was too ambiguous to support such an inference. Second, he argues that the court erred by deciding that the evidence was not more unfairly prejudicial than probative. Appellant contends that the evidence was circumstantial and that he could have been on the roof of Ms. Harrison’s house for other reasons; consequently, argues appellant, the evidence was not highly probative of his consciousness of guilt. He further argues that the prejudicial value of the evidence was much greater than its probative value because (1) it allowed the jury to infer that appellant was “a simple criminal and therefore more likely to have committed the crimes for which he was on trial” and (2) it “unnecessarily confused” the jury because it was evidence of the same conduct for which appellant was on trial. Appellant also argues that the court’s error was not harmless because the case relied heavily on Ms. Harrison’s testimony.

In response, the State argues that the court admitted properly testimony of the September 29 incident as evidence of consciousness of guilt because it showed that appellant tried to enter Ms. Harrison’s house to prevent her from testifying. The State maintains that appellant’s act of approaching the bedroom window on September 29 mirrored his conduct in the April 14 assault for which he was on trial. The State also argues that the motive behind the April 14 assault was to intimidate Ms. Harrison because he had blamed her for the fact that he faced fifteen years in prison related to the assault charges filed against him on April 8. In the State’s view, appellant approached Ms. Harrison’s house two days before trial with a similar motive, and the court did not abuse its discretion in concluding that he did so because he was conscious of his guilt. The State further argues that the evidence was highly probative because appellant’s conduct had a clear motive of guilt and was not unfairly prejudicial. Even if the court admitted the evidence in error, the State argues, such error was harmless because the physical evidence corroborated Ms. Harrison’s testimony and supported appellant’s convictions regardless of any improper inferences that the jury might have drawn.

III.

We review the admissibility of consciousness-of-guilt evidence for abuse of discretion. *Decker v. State*, 408 Md. 631, 649 (2009). Even if we find that the court abused its discretion, we will not reverse if the error was harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976). Error is harmless if “a reviewing court, upon

its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.” *Id.*

Evidence is admissible if it is relevant, and evidence is relevant if it tends to make a fact more or less probable. Md. Rule 5-401–402. Evidence of a defendant’s prior conduct is not admissible unless: (1) it falls within a recognized exception to Rule 5-404(b), (2) the defendant’s involvement in the conduct is established by clear and convincing evidence, and (3) the probative value of the evidence outweighs the danger of unfair prejudice. *State v. Faulkner*, 314 Md. 630, 634–35 (1989); *see* Rule 5-403.

Consciousness-of-guilt evidence is a recognized permitted purpose under Rule 5-404(b) for admitting evidence of prior conduct. *See, e.g., Decker*, 408 Md. at 640. Post-crime conduct is “considered relevant to the question of guilt because the particular behavior provides clues as to the person’s state of mind.” *Id.* at 641 (quoting *Thomas v. State*, 372 Md. 342, 352 (2002)). The probative value of this evidence depends on the “degree of confidence” with which the court can draw four inferences:² (1) from the defendant’s behavior to the defendant’s guilty conduct; (2) from the defendant’s guilty conduct to the defendant’s consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged. *Thomas*, 372 Md. at 352. If the evidence could support inferences that establish consciousness of guilt, the

² As originally articulated, the four inferences reference a defendant’s “flight.” We have rephrased the inferences to refer generally to a defendant’s conduct.

evidence is admissible if its probative value is not outweighed by the danger of unfair prejudice. *Id.* at 351, 356; *Wagner v. State*, 213 Md. App. 419, 465 (2013).

We hold that the court did not abuse its discretion in drawing the first inference from the defendant’s behavior to his guilty conduct. The court inferred from appellant’s behavior on the morning of September 29—approaching his ex-girlfriend’s house in the same manner that he did when he assaulted her on April 14—that he desired to intimidate her or prevent her from testifying. As both the Court of Appeals and this Court has held, “[s]imply because there is a possibility that there exists some innocent, or alternate, explanation for the conduct does not mean that the proffered evidence is per se inadmissible.” *Thomas v. State*, 397 Md. 557, 578 (2007); *Wagner*, 213 Md. App. at 465. Assuming *arguendo* that there were other reasons for appellant to enter Ms. Harrison’s house by climbing onto her roof, these other reasons do not foreclose a finding that his behavior could support the conclusion that he was trying to prevent Ms. Harrison from testifying at his upcoming trial.

The court did not abuse its discretion in concluding that the probative value of this evidence outweighed the danger of unfair prejudice. Unfair prejudice arises if the evidence “might influence the jury to disregard the evidence or lack of evidence regarding the particular crime.” *Odum v. State*, 412 Md. 593, 615 (2010) (internal citation omitted). Unfairly prejudicial evidence produces typically an emotional response from the jury. *See, e.g., Burris v. State*, 435 Md. 370, 385 (2013) (holding that gang association can be unfairly prejudicial “because a jury may respond viscerally to a negative image of a gang and associate the defendant with that unfavorable viewpoint”).

The evidence of the September 29 incident was highly probative of appellant's state of mind before trial. The court noted that appellant could have called the victim or knocked on her door to ask her to drop the charges. Instead, he attempted to enter her home in the same manner as he did in the April 14 assault. It is unlikely, the court concluded, that a person without a guilty conscious would do such a thing. Although the evidence was prejudicial because it implicated appellant in the same conduct for which he was on trial, the court did not abuse its discretion in finding that it was not *unfairly* prejudicial. We hold that the court did not abuse its discretion in concluding that the probative value of the evidence outweighed the danger of unfair prejudice.

**JUDGMENT OF THE
CIRCUIT COURT FOR
CHARLES COUNTY
AFFIRMED. COSTS TO
BE PAID BY
APPELLANT.**