Circuit Court for Wicomico County
Case No. C-22-CR-18-000244

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3276

September Term, 2018

AARON KEITH TOWNSEND

v.

STATE OF MARYLAND

Leahy,
Wells,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: February 13, 2020

Following a bench trial in the Circuit Court for Wicomico County, Aaron Townsend, appellant, was convicted of attempted second-degree murder, first-degree assault, second-degree assault, reckless endangerment, theft, and violating a protective order. The Court sentenced appellant to a total of 30 years' imprisonment, with all but 20 years suspended. In this appeal, appellant presents two questions for our review:

1. Did the trial court err in admitting evidence of prior bad acts?

2. Was the evidence adduced at trial sufficient to sustain the conviction for attempted second-degree murder?

For reasons to follow, we hold that the trial court did not err in admitting evidence of appellant's prior bad acts. We likewise hold that the evidence was sufficient to sustain appellant's conviction. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

Appellant was arrested and charged following an altercation with a woman, Wendy Rosa. At appellant's bench trial, Ms. Rosa testified that she had known appellant for nine years and that the two had been in a romantic relationship. Ms. Rosa added that, although the romantic relationship had ended three years prior, she and appellant stayed "in contact." Ms. Rosa testified that, in February of 2018, she obtained a protective order against appellant.

Ms. Rosa testified that, on February 19, 2018, following her acquisition of the protective order, she was at her apartment watching television when she heard a knock at her front door. When Ms. Rosa went to the door and asked who was there, appellant

identified himself. After Ms. Rosa opened the door and invited appellant inside, the two "started talking." Ms. Rosa testified that, at the time, appellant "was staggering."

Ms. Rosa testified that, during her conversation with appellant, she received a telephone call from her neighbor, which she answered. Shortly thereafter, Ms. Rosa left her apartment and went over to her neighbor's home. When Ms. Rosa returned to her home, appellant "was furious" and began "arguing" with Ms. Rosa and "yelling" at her. Appellant then "ran into the kitchen," grabbed a "kitchen knife," and "started walking around the house." Not long after, appellant grabbed Ms. Rosa's hands and told her that they were "going to go take a walk." The two then walked out of Ms. Rosa's apartment. As they walked, Ms. Rosa told appellant to "stop" and "put the knife away." Appellant "kept yelling" and told Ms. Rosa that she was "going to pay for this."

Ms. Rosa testified that, when she and appellant reached the back of her apartment building, she "shook [her] hands away" and tried to run. Ms. Rosa testified that appellant then "jumped on [her]," "choked [her] throat," and "started beating [her] up." Ms. Rosa added that appellant was also "yelling that he was going to kill [her]." After Ms. Rosa told appellant to stop, he brandished another knife, which Ms. Rosa described as "a little box knife." Ms. Rosa testified that she could not remember if appellant still had the knife that he had taken from her kitchen.

Ms. Rosa testified that, as soon as she saw the box knife, she "grabbed on to it" and "felt it cut [her] arm." When Ms. Rosa called out for help, appellant "got more mad," grabbed Ms. Rosa's mouth, and "started cutting [her]." Appellant then proceeded to cut

Ms. Rosa's face, neck, and breast. After a time, appellant "ran off."[1] Ms. Rosa continued calling for help and was eventually discovered by a neighbor, who called 911. Ms. Rosa testified that she later received stitches for cuts to her cheek, mouth, and breast, and staples for a "deep" cut under her chin.

Kelly Stottlemyer, a firefighter paramedic with the Salisbury Fire Department, testified that she responded to Ms. Rosa's apartment building on February 19, 2018. Ms. Stottlemyer testified that, upon coming upon the scene, she observed Ms. Rosa "sitting outside of the apartment building holding blood-soaked paper towels to her neck." Ms. Stottlemyer testified that she became concerned because the laceration to Ms. Rosa's neck may have impacted a major artery or her airway, "which would have been detrimental." After making these observations, Ms. Stottlemyer rendered aid to Ms. Rosa and then transported her to the hospital. Ms. Stottlemyer testified that Ms. Rosa was categorized as a "priority 2" patient, which she "usually reserv[ed] for someone who has an obvious medical or traumatic issue that is not immediately life-threatening." Ms. Stottlemyer explained that she "assigned [Ms. Rosa] a priority 2 because there [was] no apparent airway compromise and no apparent major vein bleeding."

Appellant also testified, claiming that he never intended to hurt or kill Ms. Rosa on the day of the incident. Appellant claimed that he and Ms. Rosa left her apartment because appellant believed that two individuals were coming to the apartment to kill him. Appellant testified that, when he and Ms. Rosa got outside, she started screaming, so he put his hand

[1] Ms. Rosa testified that appellant also took her phone when he ran off.

over her mouth, inadvertently cutting her. Appellant further testified that, at one point, he and Ms. Rosa were on the ground and that he may have inadvertently cut her when he tried to "get her up off the ground." Appellant admitted that he had been "getting high" on crack-cocaine prior to the altercation with Ms. Rosa.

In the end, the trial court found appellant guilty on various charges, including attempted second-degree murder. Regarding that charge, the court found as follows:

> As it relates to attempted second-degree murder, the State has to prove that the defendant took a substantial step beyond mere preparation toward the commission of murder in the second degree, that the defendant had the apparent ability at that time to commit the crime of murder in the second degree, and that the defendant actually intended to kill Wendy Rosa.
>
> Again, we are back to what the defendant's intent was at the time that this altercation occurred, whether the defendant specifically intended to kill her by his actions. Without premeditation or deliberation, but that in that moment as he was whether holding her down, tussling with her, restraining her, trying to stop her from yelling, what his actions became, the Court finds that he did take a substantial step beyond the commission of murder in the second degree by cutting her cheeks and specifically by the cut on her throat. He definitely had the ability at the time to commit the crime of murder in the second degree. If the cut had been much deeper, he would have committed at a minimum the crime of murder in the second degree.
>
> And further, the Court finds that he actually intended at that point. I agree with [the State] that the cut to the neck was the cut to kill her. It was beyond a slash in my view. It rose to the level of a swipe across the neck.
>
> The paramedic's own testimony was that that sort of throat injury is life-threatening. But for the, as I said before, quarter inch or an inch here or there, we would be here for a murder trial. Therefore, the Court finds him guilty of attempted second-degree murder.

DISCUSSION

I.

Appellant first contends that the trial court twice erred in permitting Ms. Rosa to testify that appellant had engaged in assaultive behavior prior to the incident on February 19, 2018. The first instance occurred during Ms. Rosa's direct testimony, when she was asked about her relationship with appellant:

[STATE]: How long have you known [appellant]?

[WITNESS]: Nine years.

[STATE]: And during those nine years, can you briefly explain to the judge your relationship with [appellant]? Just describe your relationship, ma'am.

[WITNESS]: The first couple of years was – was great, but towards the end, it got worse due to the drugs.

[DEFENSE]: I'm going to object, Your Honor.

THE COURT: Basis?

[WITNESS]: And –

THE COURT: Hold on. Hold on.

[DEFENSE]: Relevance. I'm going to object as to relevance.

THE COURT: Overruled. Go ahead.

[WITNESS]: And over the years, he has been abusing me and beating me up.

[DEFENSE]: Object. Move to strike. Ask for a mistrial.

THE COURT: What's the basis?

[DEFENSE]: It's more prejudicial than probative of a fact in consequence. Obviously, we are dealing with allegations of unrelated behavior, and the way that the testimony has been presented is unrelated behavior, even separate and apart from that behavior that I'm aware of so …

[STATE]: Your Honor, if we are here for a trial for an assault and murder, I think the nature and the victim's understanding of the defendant's character should come in – is in play, Your Honor. I believe that her statement that he is abusive, that he basically harms her is relevant for this type of proceeding and relevant for this day for the events which are going to come out for the Court, so we ask that you overrule the objection.

THE COURT: Okay. Overruled.

The second instance occurred after Ms. Rosa was recalled to the stand by the State as a rebuttal witness and asked about an incident that had occurred several weeks prior to the altercation on February 19, 2018:

[STATE]: Can you tell the Court the encounter that you had with [appellant] on January 29, 2018 that you told to [the police] and what happened of significance?

[DEFENSE]: I would object.

THE COURT: Basis?

[DEFENSE]: I contend that it's not relevant. To the extent it's relevant, it's more prejudicial than probative of any fact of consequence.

THE COURT: All right. Overruled. You can go ahead and answer.

[WITNESS]: For what I remember he came to my house. He was – he was over my house.

[STATE]: All right. You said he. Who is he?

[WITNESS]: [Appellant].

[STATE]: What happened when [appellant] came to your house on that date?

[WITNESS]: He came over and spend the night with me, and we were having a conversation, and we was talking and all that. He got mad and upset and start[ed] arguing and whatnot. And he wanted me to leave to go to his mom's house, and I told no, I was not going anywhere.

So he got mad and he said, no, you're going to go with me. And I kept telling him, no, I'm not going to leave with you. And he got mad and all that. And he got quiet, and all of a sudden, he just got up and just smacked me. And the next thing you know, I hit him back, and he punched me and we started fighting.

[STATE]: Okay. Did there ever – did a red-handled knife ever appear during the fight?

[WITNESS]: He pulled out a knife.

[STATE]: What did he do with the knife?

[WITNESS]: He was just flicking it around.

[STATE]: Did he ever make any statements to you regarding the knife?

[WITNESS]: He said he was going to kill me that day.

* * *

[STATE]: What did [he] do with the knife, if you remember?

[WITNESS]: He had it held to me by my neck on the floor.

[STATE]: Did he make any statements to you?

[WITNESS]: He told me not to move. If I was going to move, he was going to cut me.

Appellant now claims that the trial court erred in permitting Ms. Rosa to give the above testimony. Appellant argues that the evidence, which constituted "prior bad acts," was irrelevant and prejudicial.

Evidence is relevant if it makes "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. Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402. We review the court's determination of relevancy under a *de novo* standard. *State v. Simms,* 420 Md. 705, 725 (2011).

Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the [fact-finder's] evaluation of the issues in the case." *Smith v. State,* 218 Md. App. 689, 705 (2014). In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State,* 236 Md. App. 533, 549 (2018). Moreover, "[t]o justify excluding relevant evidence, the 'danger of unfair prejudice' must not simply outweigh 'probative value' but must, as expressly directed by Rule 5-403, do so 'substantially.'" *Id.* at 555. "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State,* 152 Md. App. 305, 324 (2003).

In addition, Maryland Rule 5-404(b) prohibits the admission of a defendant's prior "bad acts" if that evidence is offered "to prove the character of a person in order to show

action in conformity therewith." "Maryland Rule 404(b) prohibits other bad acts evidence to protect against the risk that a jury will assume that because a defendant committed other crimes, he is more likely to have committed the crime for which he is on trial." *Smith v. State*, 232 Md. App. 583, 599 (2017).

Evidence of a defendant's prior bad acts "may be admitted, however, if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit a crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989). "Bad act" evidence has special relevance if it shows "motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5-404(b). Whether "bad act" evidence has special relevance is a legal determination that we review *de novo*. *Stevenson v. State*, 222 Md. App. 118, 149 (2015). "If we determine that the 'bad act' evidence in question has special relevance, then we balance the probative value of and need for the evidence against the likelihood of undue prejudice."[2] *Id.* (citations omitted). That analysis "implicates the exercise of the trial court's discretion, and we will only reverse the court's balancing determination if the court abused its discretion." *Id.* (citations and quotations omitted).

Against that backdrop, we hold that Ms. Rosa's testimony regarding appellant's prior assaultive behavior was substantially relevant. Ms. Rosa's testimony, which

[2] Before admitting evidence of "other crimes," a trial court must also determine whether the defendant's involvement in the "other crimes" can be established by clear and convincing evidence. *State v. Faulkner*, 314 Md. 630, 634-35 (1989). Appellant does not challenge that aspect of the trial court's decision.

established that appellant had been abusive over the course of their relationship and that he had attacked her with a knife several weeks prior to the stabbing incident, was relevant to show motive and intent, both of which are recognized exceptions to the general rule against admission of "prior bad act" evidence. *See, e.g., Snyder v. State*, 361 Md. 580, 605 (2000) ("Evidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive."); *Jackson v. State*, 230 Md. App. 450, 458-61 (2016) (holding that challenged evidence was probative of defendant's motive in assaulting victim, where the evidence established that the defendant and the victim had a violent relationship, that the defendant had, on a previous occasion, knocked the victim's tooth out, and that the defendant had previously assaulted the victim).

We likewise hold that the trial court did not abuse its discretion in admitting Ms. Rosa's testimony. As noted, the evidence's probative value was significant. And, although the evidence may have been somewhat prejudicial in that it hurt appellant's case, we cannot say that the evidence's clear probative value was *substantially* outweighed by the danger of *unfair* prejudice, nor can we say that the trial court's decision to admit the evidence was unreasonable or beyond the fringe of what this Court deems minimally acceptable. *See Jackson*, 230 Md. App. at 461 (discussing the abuse of discretion standard).

II.

Appellant next claims that the evidence adduced at trial was insufficient to sustain his conviction of attempted second-degree murder. Appellant maintains that the State failed to establish that he intended to kill Ms. Rosa.

"The test of appellate review of evidentiary sufficiency is 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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

"'[T]he crime of attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation.'" *Spencer v. State*, 450 Md. 530, 567 (2016) (quoting *State v. Earp*, 319 Md. 156, 162 (1990)). "The intent which is required in the crime of 'attempted murder is the specific intent to murder, *i.e.*, the specific intent to kill under circumstances that would not

legally justify or excuse the killing or mitigate it to manslaughter.'" *Id.* at 568 (quoting *Earp*, 319 Md. at 167). "Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Id.* (citations and quotations omitted). Such an inference may be drawn "from surrounding circumstances such as the accused's acts, conduct and words." *Jones v. State*, 213 Md. App. 208, 218 (2013) (citations and quotations omitted).

Here, the evidence showed that, after forcing Ms. Rosa out of her apartment at knife point, appellant jumped on her, yelled that he was going to kill her, pulled out another knife, and began cutting her, causing numerous injuries. One of those injuries, a cut to Ms. Rosa's throat, resulted in heavy bleeding and caused concern on the part of the treating paramedic, Ms. Stottlemyer, who testified that the laceration to Ms. Rosa's neck could have impacted a major artery or her airway, which would have been "detrimental." *See Wood v. State*, 209 Md. App. 246, 318 (2012) (noting that "an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body.") (citations and quotations omitted). Following the attack, appellant fled the scene. *See Thompson v. State*, 393 Md. 291, 303 (2006) (noting that "flight may be indicative of a consciousness of guilt by the defendant.").

From those facts, a reasonable factfinder could have concluded that appellant intended to kill Ms. Rosa. That appellant ultimately testified to the contrary is of no consequence. *See Chisum v. State*, 227 Md. App. 118, 136 (2016) (noting that "the availability of other permitted inferences does not in any way negate or compromise the

validity and legal sufficiency of the permitted inference of the intent to kill."). Accordingly, the evidence was sufficient to sustain appellant's conviction.

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