Circuit Court for Anne Arundel County
Case No.: C-02-CR-19-001230

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 27

September Term, 2020

ISAIAH KELLEY

v.

STATE OF MARYLAND

Kehoe,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: July 9, 2021

A jury in the Circuit Court for Anne Arundel County convicted Isaiah Kelley of first-degree assault, two counts of second-degree assault, and two counts of reckless endangerment. The court sentenced him to twenty-five years' imprisonment for first-degree assault offense and a consecutive run term of ten years, all suspended, for the second-degree assault, to be followed by five years of supervised probation. The reckless endangerment counts were merged for sentencing purposes. On appeal, Kelley presents two questions for our review:

1. Did the court err in admitting evidence of an alleged prior assault by appellant of the same victim in this case?

2. Did the court err in allowing defense counsel to represent appellant through the litigation of pre-trial motions without investigation after defense counsel stated, "I don't know whether I can represent him with the zeal and advocacy required under the rules of professional conduct"?

Finding no error or abuse of discretion by the trial court, we will affirm.

Background

According to the evidence introduced at trial, A.,[1] who was seventeen years old at the time of trial, began dating Kelley in 2017, and they continued to date "off and on" through April of 2019. On the morning of April 25, 2019, A. told her mother that she and Kelley had an argument during the early morning hours.

[1] The initial is chosen at random. Neither the victim's first name nor her surname begins with the letter "A."

Kevin Carr, a former assistant principal of the high school that A. attends, testified that on April 25, 2019, he met with A. in his office and observed A. to be upset, as if she had been crying, with red marks on her neck and "bags" under her eyes. A. informed Carr that she had been in a fight with her boyfriend who had removed her from a car, choked her with a phone charging cord, and kicked her. A. complained to Carr of pain in her back, neck and legs. Carr notified A.'s counselor, the school nurse, and the school resource officer of the incident.

Kaitlyn Falls, A.'s school counselor, testified that she met with A. on April 25, 2019, and found her to be shaking, crying, and "very upset." A. informed Falls that her boyfriend had been abusing her, and that he had strangled her with a cord following an argument. Falls observed that A. had "visible marks all over her arms from where she said she had been whipped with a cord" by Kelley. Falls accompanied A. to the hospital where A. stated that she was afraid that Kelley would find her, and that she had thoughts of hurting herself.

Anne Arundel County Police Officer John Connell, the school resource officer at Old Mill High School, testified that on April 25, 2019, he met with A., who was complaining of soreness in her throat, pain in her neck, and difficulty swallowing. A. reported to him that she and her boyfriend were arguing in a parking lot when her boyfriend strangled her. Officer Connell recounted that A. had reported to him that she had lost consciousness at various points, urinated on herself, and thought that she was going to die. She also told the officer that Kelley had taken her phone and punched her in the chest. Officer Connell stated that he had been present at the hospital with A. when she described

the incident and identified Kelley as her assailant. Photographs taken by Officer Connell showing A.'s injuries were admitted into evidence.

Jody Oslund, a forensic nurse examiner at Baltimore Washington Medical Center, testified as an expert in strangulation and emergency medicine. Oslund testified that she had treated A. on April 25, 2019 for injuries to her neck and body. According to Oslund, A. told her that she and her boyfriend argued and that he had choked her with a plastic cord and struck her arms and legs with a tree branch. Oslund also noticed that A. was wearing a cast on her left lower arm. A. told her that earlier that month, Kelley had hit her with a metal chair, causing her to suffer a broken wrist that required surgery. There were also large "loop marks" on A.'s body, which A. explained she had suffered when her boyfriend whipped her with a charging cord after she had broken up with him a few days earlier.

A. told Oslund that Kelley had stood behind her while she was on the ground, intermittently tightening and loosening a cord around her neck for approximately five minutes. A. reported that she blacked out and urinated on herself, and when she caught her breath, she was confused. According to Oslund, A.'s injuries were consistent with ligature strangulation, which posed a substantial risk of death or serious physical injury, and her injuries were unlikely to be self-inflicted. Oslund further opined that the injuries to A.'s arms and legs were consistent with being hit with a stick, and those injuries were not self-inflicted. Photographs taken by Oslund of A.'s injuries were admitted into evidence.

Dr. Amy Bosworth, a clinical psychologist and abuse and domestic violence specialist with Anne Arundel Medical Center, testified as an expert in domestic and

intimate partner violence. Dr. Bosworth explained the cycle of violence in domestic violence cases which begins with courtship, then shifts to a state of tension, culminating in an abusive incident, followed by a state of apologizing by the abuser. In domestic violence cases, this cycle of violence repeats itself in a continuous circle. Dr. Bosworth described a series of eight predominant behaviors that support the cycle of violence, including the use of coercion, intimidation, and threats by abusers. Dr. Bosworth testified that victims of abuse often experience feelings of fear and guilt, which make it difficult for them to testify against their abusers for fear of getting the abuser in trouble, and, as a result, victims often recant their reports of abuse or change their original "story" when they are in court. Dr. Bosworth acknowledged that she had never spoken with A.

A. testified at trial and denied that Kelley had assaulted her on April 25, 2019. She testified that her reports of the incident to her mother, school counselor, school resource officer, and medical personnel were false. She stated that she had made the false report that Kelley had beaten her because she was mad at him. She claimed that the injuries to her neck resulted from her choking herself with her charger until she lost consciousness. She claimed that the injuries to her legs resulted from an attack by a group of girls on her walk home from school.

A. recalled that she had told her counselor, Ms. Falls, that she had been choked and beaten by Kelley and that she had showed the counselor the bruising on her legs. A. also recalled telling Officer Connell that Kelley had beaten her with a stick, hit her and strangled her with a cord, causing her to lose consciousness multiple times. A. recognized the written

statement that she had provided to Officer Connell describing the incident. A. acknowledged that her written statement included a description of a previous incident of abuse where Kelley had "[taken her] by the neck and threw her down stairs and started to hit [her] with a chair a few times until [her] wrist broke and he stopped." A. testified on redirect examination that on September 26, 2017, Kelley had cut the artery in her left wrist, requiring her to have surgery.

A. stated that she was helping Kelley pay for his attorney's fees. She also acknowledged that she was placed in custody at the request of the prosecutor to secure her attendance at trial.

Analysis

A. Evidence of the 2017 Assault

Kelley contends that the circuit court erred in permitting the State to question A. regarding a prior assault by Kelley in 2017. The State responds that Kelley failed to preserve this claim for appeal, but if not affirmatively waived, the trial court did not err or abuse its discretion in admitting the testimony.

Prior to trial, the State filed a notice of intent to introduce evidence of prior bad acts pursuant to Md. Rule 5-404(b), seeking to admit evidence of Kelley's assaults of A. on three prior occasions; September 26, 2017, April 10, 2019, and April 20, 2019. The State argued that the evidence was admissible to show motive and explain A.'s reluctance to testify against Kelley, given his previous abuse and control of her. Kelley argued that the prejudicial impact of the evidence outweighed its probative value.

The court ruled that the prior assaults were relevant to show motive, and that the probative value of the two assaults in April of 2019 outweighed the risk of prejudice because those incidents were close in time to the assault charged in the case. The court excluded evidence of the 2017 assault, however, concluding that the prejudicial effect of that evidence outweighed its probative value. The court found that the 2017 incident was further removed in time and the nature of the relationship between Kelley and A. at that time was not definitively established.

On direct examination, A. testified that she had fabricated the reports that Kelley had assaulted her on April 25, 2019, and she denied her previous written statements describing his prior assaults of her on April 10 and April 20, 2019. Pursuant to the court's order, the State did not reference the 2017 assault during its direct examination of A. On cross-examination, defense counsel questioned A. about the history of her relationship with Kelley:

> Q. Are you lying to protect him?
>
> A. No.
>
> Q. Has he threatened you?
>
> A. No.
>
> Q. Has he intimidated you?
>
> A. No.
>
> Q. And you have known [Kelley] for at least two years, correct?
>
> A. Yes.
>
> Q. Do you think you have an understanding of his personality?
>
> A. Yes.
>
> Q. And being in that relationship and after the relationship did you ever feel threatened by his personality?

A. No.

The prosecutor requested permission to question A. on re-examination about the 2017 assault, arguing that defense counsel's questioning as to whether A. had *ever* felt threatened by Kelley had opened the door to permit the State to introduce evidence of the 2017 assault. Defense counsel asserted that his question did not open the door to evidence of the prior assault. The trial court ruled that the defense had opened the door and permitted the State to introduce evidence regarding the 2017 assault, explaining:

> The State was very specific in its timeframe. You opened it up for the entire relationship. Once you opened that up she said she had never felt threatened by him during the relationship.
>
> I think the fact that she was assaulted by him prior in this relationship now becomes fair game. I do not want anything with regards to what was the result of that or whether he was found guilty or convicted.
>
> I want it to be very specific with relation to that one incident.

The prosecutor then questioned A. as follows:

> Q. So, [A.], isn't it true that you told the hospital staff on April 25th that your boyfriend has been abusing you for the past three years?
>
> A. No.
>
> Q. You never said that?
>
> A. No.
>
> Q. [A.], isn't it also true that on September 26, 2017, that [Kelley] cut your left wrist to the artery requiring you to undergo surgery?
>
> A. Correct.

Following the bench conference, Kelley did not object to the State's question regarding the incident on September 26, 2017. His objection to that evidence is therefore waived. *See* Rule 4-323(a) ("An objection to the admission of evidence shall be made at

the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."); *Ridgeway v. State*, 140 Md. App. 49, 66 (2001) ("A challenge to the trial court's decision to admit testimony is not preserved unless an objection is made each time that a question eliciting that testimony is posed."); *Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (stating that "[c]ases are legion … to the effect that an objection must be made to each and every question to preserve the matter for appellate review") (citation omitted). To preserve an objection, a party must object "each time a question concerning the [matter is] posed or . . . request a continuing objection to the entire line of questioning." *Wimbish v. State*, 201 Md. App. 239, 261 (2011) (quoting *Brown v. State*, 90 Md. App. 220, 225 (1992)). *See* Md. Rule 4-323(b) ("At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party."). In this case, Kelley did not request a continuing objection and none was given.

For the same reasons, Kelley also waived his argument that the court abused its discretion in permitting the State to introduce evidence of the 2017 assault through other witnesses and medical records. Kelley failed to object to the testimony of Ms. Falls when she testified that A. had complained that "her arm, which had previously been injured, was also hurting," which "was a prior injury she told me about the previous year … ." When Officer Connell testified that A. had told him there was a history of abuse between her and Kelley, consisting of "[a]pproximately 20 to 30 incidences[,]" Kelley did not object. Additionally, Kelley did not object to the introduction of A.'s medical records, which

included references to prior abuse by Kelley and the fact that the 2017 assault had resulted in Kelley serving three years in jail. Because Kelley failed to object to this additional evidence regarding the 2017 assault, those objections were also waived. *See Berry v. State*, 155 Md. App. 144, 172 (2004) ("The failure to object as soon as the … evidence was admitted, and on each and every occasion at which the evidence was elicited, constitutes a waiver of the grounds for objection.").

Even if Kelley had not waived his objections to the evidence of the 2017 assault, we would conclude that the trial court did not abuse its discretion in admitting the evidence. Kelley argues that evidence that he had assaulted A. with a knife in 2017, requiring her to have surgery, was not a "tailored response" to A.'s testimony that she had never felt threatened by his personality, and therefore exceeded the narrow limits of the open door doctrine. Kelley further contends that the prejudicial effect from the admission of the 2017 incident far outweighed any probative value in rebutting A.'s testimony or impeaching her credibility.

The State responds that the court properly permitted the prosecutor to elicit evidence of the 2017 assault because that evidence was especially relevant to show Kelley's motive and intent in assaulting A. on April 25, 2019, and necessary to rebut A.'s testimony that she had never felt threatened by Kelley.

We review for abuse of discretion whether evidence admitted pursuant to the open door doctrine exceeded the limits of that doctrine. *State v. Robertson*, 463 Md. 342, 358 (2019). "Abuse of discretion exists where no reasonable person would take the view

adopted by the trial court, or when the court acts without reference to guiding rules or principles." *Id*. at 364 (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)) (cleaned up).

The open door doctrine "'is based on principles of fairness and permits a party to introduce evidence that otherwise might not be admissible in order to respond to certain evidence put forth by opposing counsel.'" *Khan v. State*, 213 Md. App. 554, 573 (2013) (quoting *Mitchell v. State*, 408 Md. 368, 388 (2009)); *see also Daniel v. State*, 132 Md. App. 576, 590-92 (2000) (State was permitted to question police officer on redirect about a suspect in the investigation after the defense "opened the door" by asking about the individual's status in the investigation on cross-examination). The doctrine functions to "balance any unfair prejudice one party may have suffered" once opposing counsel "has injected an issue into the case[.]" *Robertson*, 463 Md. at 351-52 (citations and quotation marks omitted).

"This doctrine is narrow, and a response to the issues injected by the adverse party should be tailored appropriately." *Khan*, 213 Md. App. at 574 (citation omitted). Where evidence of a prior incident is permitted as rebuttal evidence, the party using the evidence should not be permitted to elicit additional details of the prior incident. *Id*. at 575; *accord Robertson* at 361. Ultimately, rebuttal evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice[.]" *Id*. at 574 (citing Rule 5-403).

In this case, the circuit court's decision to allow evidence of the 2017 assault was not an abuse of discretion. The evidence was introduced to rebut A.'s statement that she

had never felt threatened by Kelley with evidence that she had previously been assaulted by him. Once the defense expanded the scope of time to include prior events in their relationship, the trial court was required to determine whether the prior bad act of Kelley's assault of A. in 2017 was admissible.

Rule 5-404(b) provides that, "[e]vidence of other crimes, wrongs or other acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith." The rule "restricts the admissibility of evidence of 'other crimes, wrongs, or acts,' unless that evidence has special relevance to the case." *Odum v. State*, 412 Md. 593, 609 (2010) (citing *Ayers v. State*, 335 Md. 602, 630-31 (1994), *abrogated on other grounds by State v. Jones*, 466 Md. 142 (2019)). Evidence of other crimes or bad acts is admissible, however, where "the evidence is 'specially relevant' to a contested issue" other than propensity, "such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Rule 5-404(b)).

We have recognized that evidence of a prior assault of a victim is admissible to establish motive and identity. *See e.g., Vaise v. State*, 246 Md. App. 188, 211-12 (2020) (holding that evidence of a prior assault of the victim was admissible to show motive, intent and identity); *Jackson v. State*, 230 Md. App. 450, 461 (2016) (holding that evidence of defendant's prior history of domestic abuse of his girlfriend was "clearly probative" of defendant's motive for assault to "exert[] control over the victim through the perpetration of a cycle of violence"); *Page v. State*, 222 Md. App. 648, 664 (2015) (holding that

evidence of defendant's failed prior attempt to shoot the victim was relevant to show motive and intent for shooting).

In this case, evidence that Kelley had previously abused A. had special relevance to show Kelley's motive for assaulting her on April 25, 2019. The evidence was also highly probative of the degree of control Kelley had exerted over A. and her fear of him, as well as her credibility and her readiness at trial to recant her earlier reports of Kelley's abuse. In this case, the trial court did not abuse its discretion in finding that the probative value of the evidence of the 2017 assault was not substantially outweighed by its potential for unfair prejudice.

Finally, the court properly limited the scope of the State's redirect examination by precluding the State from eliciting further details of the assault and the disposition of the resulting charges. *See Khan*, 213 Md. App. at 575 (holding that the trial court did not abuse its discretion in admitting evidence of a prior complaint in defendant's work history, where the defendant's past work performance was an issue raised by the defense, and the State was precluded from eliciting further details of the complaint on redirect).

In conclusion, Kelley's contentions as to the admissibility and relevance of the evidence at issue are not properly before this Court. And even if they were, the trial court's rulings at issue were not erroneous.[2]

[2] Kelley also asserts that what he characterizes as the trial court's errors were not harmless beyond a reasonable doubt. *See, e.g., Dionas v. State*, 436 Md. 97, 108 (2013). Because there was no error on the trial court's part, there is no reason for us to address harmless error.

B. Maryland Rule 4-215(e)

Kelley's second contention is that the circuit court erred in failing to conduct a Md. Rule 4-215(e) inquiry after counsel expressed concerns about his ability to represent him. Kelley argues that his counsel's statement, made at the conclusion of the court's Rule 4-215(e) inquiry, triggered a further inquiry under the Rule, and the trial court's failure to conduct a second Rule 4-215(e) inquiry was reversible error. We disagree.

Prior to trial, Kelley requested to discharge his counsel, James Keatts. The court inquired of Kelley as to his reasons for discharging counsel:

THE COURT:	All right. Is there anything you want to tell me about that, as to why you want to discharge him?
MR. KELLEY:	It's just, Your Honor, I had a few words with my family and we decided we would like to go with a family lawyer instead.
THE COURT:	Who's that?
MR. KELLEY:	Mr. Keith Gross.
THE COURT:	Keith Gross?
MR. KELLEY:	Yes.
THE COURT:	Okay, when did you make that decision? Today?
MR. KELLEY:	Yesterday.
THE COURT:	Yesterday.
MR. KELLEY:	Yes sir.
THE COURT:	Have you hired Mr. Gross at this point? Like you've actually paid him to represent you?
MR. KELLEY:	I'm not fully award [aware?] of his status to my case right now.
THE COURT:	Who did you speak with from your family?
MR. KELLEY:	My mother.

* * *

THE COURT: Oh, okay. Is there any specific reason you want to give me as to why you want to discharge Mr. Keatts? Anything he's done or hasn't done that you're dissatisfied with particularly? Other than you'd rather have Mr. Gross here?

MR. KELLEY: No, it's really just in conversation with my family they was really insisting on having Mr. Gross as representing me.

THE COURT: Why?

MR. KELLEY: They just feel like sticking with more of a family lawyer.

THE COURT: How about you? What do you think? It's really your life.

MR. KELLEY: Right, no I feel like, I mean I'm okay with that. I'm okay with going in, having Mr. Gross represent me.

THE COURT: Um-hum.

MR. KELLEY: And you know, I'm okay with that. Because I'm fine.

THE COURT: Um-hum. All right. Is there anything you wish to tell me that you've asked Mr. Keatts to do that he hasn't done or anything, any specific dissatisfaction other than you prefer to have your family attorney, Mr. Gross, here?

MR. KELLEY: Um, just –

THE COURT: You know, I have to ask you these questions, so I'm sorry.

MR. KELLEY: No I understand. I mean it's just I feel more comfortable with Mr. Gross representing me.

THE COURT: Okay. So at this point – is there anything else you want to say that you haven't had a chance to say?

MR. KELLEY: No, that's it.

The court advised Kelley that if he elected to discharge his counsel, his case would still go forward and he would be required to represent himself. Kelley elected to proceed with Mr. Keatts as his counsel. Before the pre-trial motions resumed, Kelley's counsel addressed the court:

MR. KEATTS: Judge, I would just say at this point I don't know whether I can represent him with the zeal and advocacy required under the Rules of Professional Conduct.

THE COURT: Okay, you'd have to explain to me why then, Mr. Keatts. I've represented—this goes back many many years—clients that have disagreed with me and that I've had difficulties with for a variety of different reasons, but that's just part of the role as an attorney. So if there's anything you want to tell me, Mr. Keatts, this is your opportunity.

MR. KEATTS: No, I don't want to get into any specifics, Your Honor.

THE COURT: Okay. Then I will have you go back down to Judge Alban.

MR. KEATTS: Okay, thank you[,] Your Honor.

Following several pre-trial motions, the trial was postponed to December 3, 2019 for unrelated reasons. Prior to December 3, 2019, Mr. Keatts withdrew his appearance and Mr. Gross entered his appearance on Kelley's behalf. At trial, Kelley was represented by Mr. Gross.

We review a trial court's interpretation and application of Rule 4-215(e) *de novo*. *Cousins v. State*, 231 Md. App. 417, 438 (2017). The precise mandates of Rule 4-215(e) require "strict compliance." *Id*. at 436 (citations omitted). We review the court's ultimate decision whether to grant or deny a defendant's request to discharge counsel for abuse of discretion. *State v. Hardy*, 415 Md. 612, 621 (2010) (citation omitted). "To constitute an abuse of discretion, the decision 'has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Cousins*, 231 Md. App. at 438 (quoting *Evans v. State*, 396 Md. 256, 277 (2006)).

Rule 4-215(e) sets forth the procedure courts must follow when a defendant expresses a desire to discharge counsel before trial. It provides, in pertinent part:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel.

Before addressing the merits of Kelley's appellate contention, we will provide some context.

Rule 4-215(e) is triggered by "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *Gambrill v. State*, 437 Md. 292, 302 (2014) (quoting *Williams v. State*, 435 Md. 474, 486-87 (2013)). "[O]nce a defendant makes an apparent request to discharge his or her attorney, the trial judge's duty is to provide the defendant with a forum in which to explain the reasons for his or her request." *State v. Taylor*, 431 Md. 615, 631 (2013).

Here, the circuit court complied with its duty by providing Kelley a forum to explain his reasons for seeking to discharge his current counsel. The court also provided Mr. Keatts with an opportunity to explain the reasons for his concerns, which he declined to do. In our view, both Kelley and Mr. Keatts were provided "wide latitude" in addressing their complaints to the court. *See Cousins*, 231 Md. App. at 441 (holding that circuit court did

not abuse its discretion in rejecting both the defendant's grievance about counsel and counsel's objection to proceeding while the grievance was pending, where counsel failed to explain how the grievance interfered with his ability to represent defendant). "In fact, the very purpose of the hearing was to investigate the bases, if any for [the defendant's] complaints." *Id*.

Kelley does not argue that the trial court erred in its handling of *his* statement to the court that he and his family preferred that he be represented by Mr. Gross. His appellate contention is that, in light of *Mr. Keatts's* statement, the trial court was required to hold an evidentiary hearing to determine whether there were "facts peculiar to the case [that would] preclude the representation of competing interests by the [Office of the Public Defender]" (quoting *Graves v. State*, 94 Md. App. 649, 671 (1993), *rev'd on other grounds*, 334 Md. 30 (1994)). The principle of law that Kelley invokes is correct, but it is inapplicable to the present case because there was nothing in what either Kelley or his lawyer told the court that suggested that the OPD was confronted with a conflict of interest. The court was not required to hold an inquiry to address a problem that did not exist. Kelley does not assert that there was any other violation of Rule 4-215(e), nor does he claim that the trial court otherwise abused its discretion when it denied his motion to discharge counsel. And, of course, because the trial was rescheduled for other reasons, Mr. Keatts was discharged and Mr. Gross represented Kelley at the trial.

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