Circuit Court for Wicomico County
Case No: C-22-CR-19-000669

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 526

September Term, 2020

CURTIS LEE WOOTTEN

v.

STATE OF MARYLAND

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 9, 2021

*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.

Following a bench trial in the Circuit Court for Wicomico County, Curtis Lee Wootten, appellant, was convicted of first-degree assault, two counts of second-degree assault, and two counts of reckless endangerment, stemming from two separate altercations with his wife, Milissa David. On appeal, Mr. Wootten contends that the circuit court erred in allowing the State to introduce evidence about an alleged prior assault during trial. For the reasons that follow, we shall affirm.

Mr. Wootten and Ms. David began dating in October 2012 and, thereafter, were married in January 2017. Ms. David described the relationship as "abusive" and "[v]ery rocky towards the end," with Mr. Wootten's alcohol consumption becoming an issue in the relationship. Mr. Wootten testified that Ms. David began experiencing "psychotic episodes," beginning "around the time [that they] got married." He further testified that there were "numerous incidents" in the past in which Ms. David "was the one that would open up the physical altercations."

The charges against Mr. Wootten stemmed from two alleged physical altercations which occurred on or about Labor Day of 2019 and October 24, 2019. At trial, Ms. David was asked on cross-examination whether, prior to these altercations, she had ever pepper sprayed Mr. Wootten. Over the State's objection as to relevance, the Court allowed the defense to elicit testimony regarding the incident. Ms. David confirmed that she had pepper sprayed Mr. Wootten "four years ago" and that she had been charged with assault stemming from the incident. On further cross-examination, Ms. David was asked, as an explanation of why she initially told the police that her 2019 injuries stemmed from a fall rather than from the altercation with Mr. Wootten, whether it was "fair to say that [she was]

concerned about [her] own culpability given the prior arrest" related to the pepper spray incident. Ms. David denied that concern of her own culpability was the reason she did not immediately report the cause of her injuries to the police, explaining that she just "didn't want [Mr. Wootten] to go to jail."

On redirect examination, Ms. David testified that despite their "abusive relationship," she had "protected" Mr. Wootten before the 2019 altercations. Ms. David was then asked whether Mr. Wootten had been "charged with assaulting [her] in the past." Mr. Wootten noted an objection to the admission of such testimony on the grounds that it would constitute improper propensity evidence, but the objection was overruled on the grounds that the defense had opened the door. Ms. David proceeded to testify that she "had pressed assault charges on [Mr. Wootten]" in 2016, but that she had refused to testify against him in that case.

On appeal, Mr. Wootten contends that the trial court should not have admitted Ms. David's testimony regarding the past assault charges because it was "clearly propensity evidence and the danger of unfair prejudice from this evidence far outweighed the probative value." Indeed, pursuant to Maryland Rule 5-404(b), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, the trial court did not admit Ms. David's testimony as evidence of Mr. Wootten's propensity to commit assaults. Rather, the trial court agreed that Mr. Wootten had opened the door to the admission of such testimony.

The opening the door doctrine "authorizes admitting evidence…where one party introduces evidence that was previously irrelevant, over objection, and in doing so, makes

relevant an issue in the case." *State v. Heath*, 464 Md. 445, 459 (2019). Indeed, we note that the defense opened the door to the admission of Ms. David's testimony in two respects. First, by inquiring into the pepper spray assault of Mr. Wootten, the defense opened the door to testimony concerning, as the defense described in its closing, "the very volatile history between two people" in which they were often "mutual combatants." Evidence of Mr. Wootten's prior assault charges stood to contradict the testimony which suggested that Ms. David was the sole aggressor in the relationship.

Secondly, in asking Ms. David whether her concern over her prior assault charge was the reason she did not initially report the cause of her 2019 injuries to the police, the defense opened the door with respect to Ms. David's history of noncooperation with the police in an effort to protect Mr. Wootten. It was, therefore, relevant whether Ms. David had cooperated with the police in past assault investigations involving the two parties. Her redirect testimony corroborated the explanation that she provided during cross-examination that she was not forthcoming with police out of concern for Mr. Wootten's criminal consequences.

While a jury might have improperly considered the evidence of Mr. Wootten's prior assault charge as propensity evidence and may have been prejudiced by it, we are permitted to presume that the trial judge, acting as fact-finder, acted appropriately and did not consider the testimony as propensity evidence under 5-404(b). *See Plank v. Cherneski,* 469 Md. 548, 607 (2020) (the Court may "presume that trial judges know the law and correctly apply it.").

Moreover, even if the trial court's ruling was in error, such error would have been harmless. "[A]n error will be considered harmless if the appellate court is 'satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Dionas v. State*, 436 Md. 97, 108 (2013) (internal citation omitted). Based on Ms. David's testimony, the corroborating testimony of Ms. Jackson, and the medical records and photographs documenting Ms. David's multiple injuries, we are satisfied there was more than sufficient evidence of Mr. Wootten's guilt such that the effect of evidence of the past assault, if any, was negligible.

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