

Circuit Court for Prince George's County
Case Nos. CT201087X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 697

September Term, 2023

JEROME JOHN HARRIS

v.

STATE OF MARYLAND

Leahy,
Shaw,
Tang,

JJ.

Opinion by Tang, J.

Filed: October 24, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises from the killing of Zena Nichols on the evening of April 10, 2020. The State charged Jerome John Harris, the appellant, with first-degree murder, commission of a crime of violence against a pregnant person, use of a firearm in the commission of a violent crime, destroying or concealing physical evidence, and first-degree arson (collectively, the “primary charges”).

The appellant was also charged with crimes prohibiting him from possessing ammunition and a firearm (collectively, the criminal-in-possession, or “CIP charges”): illegal possession of ammunition after having been convicted of a disqualifying crime under PS § 5-133.1(b), and illegal possession of a regulated firearm after a felony conviction under PS § 5-133(c).¹

After a multi-day trial in January 2023, the jury convicted the appellant of all counts, and the court sentenced the appellant to an aggregate sentence of life plus sixty-three years.

On appeal, the appellant presents two questions for our review:²

¹ The appellant was also charged with illegal possession of a regulated firearm after having been convicted of a disqualifying crime under PS § 5-133(b). Initially, trial commenced on May 16, 2022, but the court declared a mistrial the next day. The docket entry describes the “disposition” for this count as a “mistrial.”

PS § 5-133 “restricts certain classes of individuals from possessing regulated firearms.” *Hemming v. State*, 469 Md. 219, 244 (2020). An individual may be prohibited from possessing regulated firearms if the individual has a prior conviction for a crime of violence (PS § 5-133(b)) or a felony conviction (PS § 5-133(c)). PS § 5-133.1(b) restricts individuals from possessing ammunition if the person is prohibited from possessing a regulated firearm under PS § 5-133(b) or (c). Here, the appellant was previously convicted of attempted first-degree murder.

² In his brief, the appellant phrases the questions as follows:

1. Under *Hemming v. State*, 469 Md. 219 (2020), did the motions court abuse its discretion by denying Appellant’s motion to bifurcate counts?

1. Did the court abuse its discretion by denying the appellant’s request to bifurcate the CIP charges from the primary charges?
2. Did the court err by admitting text message exchanges between the appellant and Ms. Nichols?

We answer both questions in the negative and thus affirm the judgments of the circuit court.

BACKGROUND

The appellant and Ms. Nichols were in a romantic relationship. Around 8:55 p.m. on April 10, 2020, Ms. Nichols went to the appellant’s apartment in Hyattsville, which the appellant shared with a roommate.

Fire in the Appellant’s Apartment

Later that night, after 10:00 p.m., the Prince George’s County Fire Department responded to a call for a fire in the appellant’s apartment. Upon arrival, firefighters observed black smoke coming from the apartment window and forced open the locked door to the apartment. The fire was contained to the back bedroom, which was also locked. After the firefighters forced open the locked bedroom door, they extinguished the fire and observed a deceased person, later identified as Ms. Nichols, in the center of the room. Police were called to investigate.

Police observed a suspected bloody footprint outside the front door to the apartment and more blood on the floor by the doorway to the apartment. In the back bedroom, police recovered a lighter near the body. Police found a chair near the area where a smoke detector had been removed from its mount. Officers located a removed smoke detector in a closet.

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2. Did the trial court err by admitting into evidence irrelevant text message exchanges between Appellant and Zena Nichols?

Captain Rafael Wells of the Fire Marshal’s Office investigated the cause of the fire. Captain Wells determined that the fire originated from a blanket wrapped around Ms. Nichols’s body. He concluded that the ignition source was an open flame, i.e., “a lighter or something of that nature.”

Discovery of Firearms and Ammunition

Police searched the appellant’s apartment and, in the back bedroom, recovered a Smith & Wesson .44 Magnum revolver from a closet, a handgun inside a pillowcase on the bed, and ammunition. Police also recovered documents bearing the appellant’s name in that bedroom.

Cell Phones

Ms. Nichols’s cell phone was recovered from underneath her body. Police obtained her cell phone records and identified her last caller as the appellant. With a search warrant, police conducted real-time tracking of the appellant’s cell phone on April 12. Police tracked the phone and recovered it from an individual who found it on the shoulder of Interstate 95.

Detective Aven Odhner, an expert in forensic cell phone analysis, performed an analysis of the cell site location information for the appellant’s phone. She testified that this information was consistent with the phone being in the area of the appellant’s apartment on the evening of April 10.

Autopsy and DNA Testing

Dr. Nikki Mourtzinis performed the autopsy of Ms. Nichols. Dr. Mourtzinis observed “approximately 90 percent charring” on Ms. Nichols’s body and two gunshot

wounds to the head. Because there was no soot deposit in Ms. Nichols’s airway and no evidence of thermal injuries to her organs, Dr. Mourtzinis concluded that the cause of Ms. Nichols’s death was gunshot wounds to the head and the manner of death was homicide. Dr. Mourtzinis testified that she had also examined Ms. Nichols’s uterus and found a mass, which “represented an intrauterine pregnancy[.]”

A DNA analyst tested the suspected blood collected from inside and outside the apartment entrance and concluded that the DNA profile was consistent with Ms. Nichols’s profile. In addition, a vaginal swab of Ms. Nichols contained semen that was consistent with the appellant’s DNA.

Appellant’s Outreach to His Ex-Girlfriend

The appellant’s former girlfriend, Renisha Times, contacted the police about her suspicions that the appellant had killed Ms. Nichols. Approximately four days after Ms. Nichols’s death, the appellant called Ms. Times and stated that he regretted ending their relationship and that “he needed some help.” The appellant told her that he wanted Ms. Times to help him get to Michigan to her family’s property. After asking him to call her back later, Ms. Times saw a news broadcast that showed the appellant’s photograph. When he called her back, she asked the appellant what happened, and he responded that “he didn’t do anything.” When Ms. Times learned more details about the murder through the news, she contacted the police.

Ms. Times met with Detective Dennis Windsor. During that meeting, Ms. Times received three phone calls from the appellant. In the first call, the appellant stated that he was attempting to travel to Philadelphia from New York. Ms. Times suggested that he take

a bus, but he said he was afraid to show his identification and asked her for money to take a taxi instead. The second call ended after Ms. Times mentioned that a dead body had been found in the appellant’s apartment. During the last call, the appellant denied involvement in what had occurred at the apartment. He stated that he had walked into his apartment, saw Ms. Nichols’s body on fire, became frightened, and then ran away. The appellant claimed that he had last seen Ms. Nichols about thirty minutes before returning to the apartment; that he had gone to a co-worker’s house; and that, upon returning home, he found his apartment on fire.

We supply additional facts below as necessary.

DISCUSSION

I.

BIFURCATION

The appellant argues that, under *Hemming v. State*, 469 Md. 219 (2020), the circuit court erred in denying his request to bifurcate the CIP charges from the primary charges. The State claims that the bifurcation issue is unpreserved because the appellant’s trial counsel requested severance rather than a bifurcated proceeding. Even if preserved, the State contends that the court’s denial of a bifurcated proceeding should be affirmed.

A.

Joinder, Severance, and Bifurcation

Maryland Rule 4-253 permits joint trials of defendants and offenses:

(a) Joint Trial of Defendants. On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents

if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

(b) Joint Trial of Offenses. If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial.

The traditional justification for permitting joinder of offenses is “that ‘a single trial effects an economy, by saving time and money, to the prosecution, the defendant, and the criminal justice system.’” *Conyers v. State*, 345 Md. 525, 548 (1997) (quoting *McKnight v. State*, 280 Md. 604, 608–09 (1977)).

Subsection (c) empowers a trial court with discretionary authority to remedy prejudice from joinder by ordering separate trials or other relief:

(c) Prejudicial Joinder. If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, *order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.*

Md. Rule 4-253(c) (emphasis added). This subsection embodies a balancing approach between “the likely prejudice caused by the joinder . . . [and] the considerations of economy and efficiency in judicial administration.” *State v. Hines*, 450 Md. 352, 369 (2016) (alteration in original) (citation omitted).

“[S]everance involves the separation of issues or parties for trial by different juries.” *Hemming*, 469 Md. at 249 (citation omitted). “Bifurcation,” on the other hand, is generally “the separation of legal issues or elements of a cause of action for separate trials, ordinarily by the same jury.” *Id.* The clause that authorizes a trial court to order “separate trials of counts, charging documents, or defendants” under subsection (c) refers to severance,

whereas the clause “grant any other relief as justice requires” authorizes bifurcation. *See id.* at 267 (framing a bifurcated trial procedure as “other relief” under subsection (c)). Granting “other relief” could also include “giving a limiting instruction or redacting evidence to remove any reference to the defendant against whom it is inadmissible.” *Hines*, 450 Md. at 370.

In the criminal context, bifurcation has been raised when a defendant is charged with a criminal-in-possession offense under PS § 5-133. “Generally, to convict a defendant of possession of a regulated firearm by a prohibited person, the State must prove that a defendant was previously convicted of a disqualifying crime as an element of the offense.” *Hemming*, 469 Md. at 244. The risk of introducing evidence of a defendant’s prior convictions is that such evidence might carry too much weight with the jury and persuade them to “prejudge [a defendant] with a bad general record and deny him a fair opportunity to defend against a particular charge.” *Id.* (citation omitted).

In *Carter v. State*, 374 Md. 693 (2003), the Supreme Court of Maryland addressed the “appropriate method” for a trial court to minimize such potential prejudice. *Id.* at 697. There, the defendant was charged with a criminal-in-possession charge, namely, possession of a regulated firearm by one previously convicted of a crime of violence (robbery with a deadly weapon). *Id.* He was also charged with unlawful discharge of a firearm and possession of a regulated firearm by a person under twenty-one years of age. *Id.* The defendant sought to sever the criminal-in-possession charge from the other counts; or, in the alternative, to bifurcate the elements of the criminal-in-possession charge so that his status as a felon was not revealed until after the jury determined whether he had

possessed a firearm. *Id.* at 706. The trial court denied both motions, the defendant was convicted on all three counts, we affirmed, and the Supreme Court of Maryland granted Carter’s petition for writ of certiorari. *Id.* at 703–04.

The Court first held that the trial court did not abuse its discretion in denying the motion to sever the counts. *Id.* at 709. The Court explained that the defendant “was charged with a number of crimes emanating from a single incident and all involving the possession and discharge of a regulated firearm.” *Id.* The Court found that the defendant suffered no undue prejudice because of the joinder and that “considerable judicial resources were conserved by possibly avoiding a separate trial involving an entirely new jury hearing mostly the same evidence.” *Id.*

Regarding the request to bifurcate the criminal-in-possession charge, the defendant suggested a proceeding in which the jury would determine only whether he possessed a regulated firearm; if the jury found he possessed the regulated firearm, only then would it have to determine the other element of the charge—that is, whether he had a qualifying conviction. *Id.* at 710. The Court held that the trial court did not err in denying his motion to bifurcate the elements of that count. *Id.* at 715. It stated that “the proper course is to require a trial judge, when the defendant elects a jury trial, to allow the State to present evidence of all elements of a criminal-in-possession charge.” *Id.*; accord *Nash v. State*, 191 Md. App. 386, 399 (2010) (“[B]ifurcating *the elements of the offense*, i.e., having the jury consider solely the issue of possession of the firearm, with the issue of the prior conviction to be determined at a later time, will not be sanctioned.” (emphasis added)).

However, the Court held that, when requested by a defendant in a criminal-in-possession case, the trial court must accept a stipulation or admission that the defendant was convicted of a qualifying crime. *Carter*, 374 Md. at 720 (citing *Old Chief v. United States*, 519 U.S. 172, 191–92 (1997)). Accordingly, the fact that the trial court in *Carter* rejected the defendant’s offer of stipulation and permitted the State to introduce evidence that he was convicted of robbery with a deadly weapon was reversible error. *Id.* at 721.

The type of stipulation described in *Carter* has become known as the “*Carter* stipulation.” As the Court explained,

[W]hen the defendant admits or the parties stipulate to the previous-conviction element of a charge under [a previous version of the relevant statute], the trial judge should inform the jury that the defendant admits that he or she has been convicted of a crime for which he or she is prohibited from possessing a regulated firearm under the law. The judge should not describe the previous conviction with any more particularity or by using the categories of crimes under [the statute] (such as “crime of violence” or “felony”).

Id. at 722. The *Carter* stipulation “allows the factfinder to make the factual determination of whether the defendant possessed a firearm—the charge at issue—without importing any potential prejudice from the nature of the underlying disqualifying crime.” *Wallace v. State*, 475 Md. 639, 662–63 (2021).

B.

Hemming v. State

In *Hemming v. State*, 469 Md. 219 (2020), the Court considered bifurcation of a defendant’s criminal-in-possession charges from the remaining charges, rather than bifurcation of elements of a count. *Id.* at 243. There, the defendant was charged with various counts of possession of a regulated firearm by a prohibited person and ammunition.

Id. at 234. He was also charged with two counts of attempted first-degree murder, two counts of attempted second-degree murder, two counts of first-degree assault, two counts of use of a firearm in committing a crime of violence, and resisting arrest. *Id.* The defendant moved to bifurcate the criminal-in-possession counts from the remaining counts, suggesting that a jury decide the criminal-in-possession counts and a judge decide the remaining counts in a single hybrid trial. *Id.*

The Court recognized that Maryland Rule 4-253(c) does not specifically contemplate the bifurcation of counts between two separate fact finders within a single trial. *Id.* at 245. Ultimately, the Court held that the catchall language under subsection (c) (“grant any other relief as justice requires”) does not permit a trial court to bifurcate separate counts between the judge and jury in a single hybrid trial. *Id.* at 243.

The Court recognized, however, that the Rule *does* permit the trial court to bifurcate counts before the *same* fact finder where the trial court, “in the sound exercise of judicial discretion, determines that justice requires ‘other relief’ because a party will be unfairly ‘prejudiced by joinder for trial of counts, charging documents or defendants.’” *Id.* at 267 (quoting Md. Rule 4-253(c)).

The Court endorsed the bifurcated proceeding sanctioned by the U.S. Court of Appeals for the Third Circuit in *United States v. Joshua*, 976 F.2d 844 (3d Cir. 1992). *Id.* In *Joshua*, the district court denied the defendant’s motion to sever a felon-in-possession charge from his substantive charges, but it ordered a bifurcated proceeding under which the jury first heard evidence and deliberated on the three primary charges and then heard evidence and deliberated on the felon-in-possession charge. 976 F.2d at 846. The Third

Circuit explained that the procedure “strikes an appropriate balance between the concern about prejudice to the defendant and considerations of judicial economy.” *Id.* at 848.

Tracking *Joshua*, the *Hemming* Court offered “some guidelines” for the bifurcation of the criminal-in-possession charge(s) from the other charges:

[I]n those situations, the bifurcated counts will be decided by the same jury. Thus, the jury will first hear evidence and deliberate on the counts that do not relate to or require, as an element of the offense, proof of a defendant’s prior disqualifying conviction. In the next phase of the trial, the jury will hear necessary evidence of the defendant’s prior convictions consistent with our decision in *Carter*, [*supra*], and deliberate on charges such as possession of a regulated firearm by one with a prior felony conviction, possession of a regulated firearm by one with a disqualifying conviction; possession of ammunition by a prohibited person; and similar charges. In the context of bifurcated proceedings, generally, all of the charges against the defendant will arise out of the same, uninterrupted series of transactions. As such, the bifurcated trial will be a highly efficient way to try the case within the trial judge’s discretion. Henceforth, a trial of those offenses to which a defendant’s legal status or prior conviction is irrelevant are insulated from the jury’s deliberations on the criminal-in-possession counts.

469 Md. at 267.

The Court further explained that this type of bifurcated proceeding “can be an effective procedure to limit or ameliorate the potential prejudice in a trial involving possession of a regulated firearm by a prohibited person counts that are included within a multicount charging document.” *Id.* at 268. “Like the *Carter* stipulation and the limiting jury instruction, bifurcation is a tool available to the trial judge to limit or ameliorate potential prejudice.” *Id.*

In assessing whether a joinder of counts is improper under Rule 4-253(c), the primary concern is the potential prejudice that may befall a defendant. *Id.* at 246. Thus, this inquiry requires that the trial court utilize a “balancing approach” in which it considers “the

likely prejudice caused by the joinder . . . [and] considerations of economy and efficiency in judicial administration.” *Id.* (quoting *Frazier v. State*, 318 Md. 597, 608 (1990)).

With this overview in mind, we summarize the relevant proceedings below.

C.

Proceedings Below

In the circuit court, the appellant filed a pre-trial motion, which was later argued at a hearing. In essence, the appellant sought to try the CIP charges separately from the primary charges. Throughout the written motion and hearing, defense counsel used the terms “sever” and “bifurcate” interchangeably and blended arguments regarding the two concepts. As best we understand, the appellant’s arguments were two-fold.

First, the appellant argued that the evidence underlying all counts was not mutually admissible and was not of similar character and therefore the counts should have been “severed.” Counsel argued that the “required proof for [the CIP charges] is different from [the primary charges], in that they require the proof of a prior conviction.”

Second, the appellant contended that admission of the evidence of his prior conviction to prove the CIP charges would result in unfair prejudice because the jury might be influenced by the prior conviction and find him guilty of all counts. At the hearing, defense counsel argued that, even with a *Carter* stipulation, the appellant would be prejudiced because the jury “would be thinking about the person before them on trial as a person who can’t possess a firearm.”

Defense counsel explained that *Hemming* permitted a “bifurcated” proceeding that “severed” the CIP charges from the primary charges so long as the fact finder was the same.

Counsel indicated, however, that she had “seen instances where there ha[d] been a separate trial.” Based on that understanding, counsel requested that “a separate jury” decide the CIP charges instead of the same fact finder deciding both sets of counts in phases. This was because, according to counsel, “if a jury makes a determination on the first set of counts, when they then come to the second set of counts[,] they may be then prejudiced because now they have learned something additionally that they didn’t know in the first trial.”

After reviewing *Hemming*, the court denied the appellant’s motion. The court explained in relevant part:

I am not going to sever. I think it is all—it would just be a—kind of—one thing is the [c]ourt’s time is valuable. You could also get—for instance, you could in theory win the big case and lose the [indiscernible] if it is severed. I mean, it leads to some crazy results.

So what I am—I am going to deny the motion to sever, but I am granting [defense counsel]’s part of it, and I don’t think the State was even opposed to this. But there will be a [*Carter*] stipulation, and the stipulation will be that you are prohibited by [*sic*] having a regulated firearm under the law[.]

Defense counsel clarified that the reason for asking for the CIP and primary charges to be “severed” was not only to avoid introduction of a prior conviction, but also because the two sets of charges did not involve the same evidence. Counsel explained that “there were two guns that were recovered in the apartment, and at this point there is no evidence that either one of those firearms is tied to the shooting of [Ms. Nichols].” Counsel elaborated:

[B]ecause we are dealing with an arson, the decedent was shot in the back of the head twice and it is an apartment building. With the other factors, having the jury told that [the appellant] is prohibited from carrying a firearm, to put that in their mind, that would be prejudicial, that that is why I filed the motion.

The court inquired whether the firearms were related “in theory” to the shooting of Ms. Nichols. The State responded that the same evidence regarding the recovery of the firearms would have to be admitted at both trials, particularly where the firearms were found in connection with the shooting. The State argued against severance because the evidence needed to prove the CIP charges (aside from the disqualifying conviction) was relevant and admissible to prove the primary charges. It also argued that having two separate trials in which the same evidence would be admitted would not serve judicial economy.

Defense counsel continued to maintain that the sets of charges be “severed” because the facts “could be mutually exclusive.” This was so, according to counsel, because it was “arguable” whether a jury could find that the firearms found in the apartment were related to the shooting of Ms. Nichols. Counsel contended that the potential for the jury to be prejudiced by hearing that the appellant was disqualified from carrying a firearm outweighed concerns of judicial economy, which favored severance.

The court affirmed its earlier ruling to deny the motion to sever, explaining that the possession of the firearms, which served as the basis of the CIP charges, was relevant to the killing of Ms. Nichols, which served as the basis for the primary charges. Regarding concerns about undue prejudice, the court indicated that the jury would not hear about why the appellant was disqualified from carrying a firearm per the *Carter* stipulation.

D.

Analysis

The appellant argues that the circuit court abused its discretion by denying his motion to bifurcate the two sets of counts under *Hemming*. The appellant argues that the primary charges involve a close-range shooting followed by an arson to cover up the shooting, which are charges more serious than the CIP charges. He explains that “[t]here is no reason to introduce the risk that the information that the [appellant] is disqualified from possessing a gun will influence the jury’s verdict on these incredibly serious charges.” The appellant continues: “Where there is an easy procedure by which the court could insulate the lead counts [primary charges] from the potential taint of the possession by a prohibited person counts [CIP charges], it *must* be deemed an abuse of discretion for the court to refuse to implement it.” (emphasis added). Accordingly, the appellant asserts that reversal is required.

The State argues that the appellant’s bifurcation argument is not preserved. This is because, according to the State, defense counsel requested severance of the counts when he asked for a separate trial by different juries, rather than a single bifurcated trial where all counts would be decided by the same jury. Even if the appellant had argued for bifurcation below, the State argues that the court had the discretion to deny the request and doing so would have been proper under the circumstances.

The appellant responds that the bifurcation issue is preserved. Although defense counsel and the court “may have mixed up their terminology” as to bifurcation and

severance, he argues that the substance of his request invoked the court’s authority to bifurcate the CIP charges from the remaining charges under *Hemmings*.

While we agree that use of the terms “sever” and “bifurcate” below was imprecise, we understand the appellant’s arguments below as requesting both procedures in the alternative. Since the only question raised on appeal relates to bifurcation, we shall address that issue alone.

We conclude that the court did not abuse its discretion in denying the appellant’s request to bifurcate the CIP charges from the primary charges under *Hemming*. The record demonstrates that the court exercised its discretion by considering “the likely prejudice caused by the joinder” and “considerations of economy and efficiency in judicial administration.” *Hemming*, 469 Md. at 246 (citation omitted). The court implemented the *Carter* stipulation as a measure to ameliorate the potential prejudice of having the disqualifying crime admitted into evidence to prove the CIP charges.³ In determining whether to try the two sets of counts together, the court considered the evidentiary connection between the discovery of the firearms that served as the basis of the CIP charges and their potential relationship to the killing of Ms. Nichols. The court also considered

³ The stipulation, read to the jury without objection, was as follows:

The Defendant has been charged with the offense of possession of a regulated firearm. The parties hereby stipulate that the Defendant is prohibited from possession of a regulated firearm because of a previous conviction that prohibits his possession of a regulated firearm under Public Safety Article, Section 5-133(c).

arguments regarding the efficiency of having two trials that required the presentation of the same evidence and noted the inefficiency in having the two sets of charges tried separately.

Contrary to the appellant’s assertions, *Hemming* does not stand for the proposition that a trial court must bifurcate CIP charges from primary charges when a defendant requests it simply because it would be an “easy procedure” to insulate a defendant from prejudice. Rather, *Hemming* expressly states that Rule 4-253(c) “permit[s] the trial judge to bifurcate counts between the same fact finder, *subject to the sound discretion of the trial judge.*” 469 Md. at 243 (emphasis added). As stated above, the court exercised its discretion, and we discern no abuse of that discretion.

In addition, we are not persuaded by the appellant’s argument that the severe nature of the primary charges in relation to the CIP charges rendered the joinder of the counts unduly prejudicial. “‘Prejudice’ within the meaning of Rule 4-253 is a ‘term of art,’ and refers only to prejudice resulting to the defendant from the reception of evidence that would have been inadmissible against that defendant had there been no joinder.” *Galloway v. State*, 371 Md. 379, 394 n.11 (2002) (citation omitted). In other words, “[p]rejudice’ means ‘damage from *inadmissible* evidence, not damage from *admissible* evidence.’” *Hart v. State*, 260 Md. App. 491, 531 (2024) (emphasis added) (citation omitted).

The “prejudice” of which the appellant complains is that the jury will be swayed against him by virtue of having multiple counts of varying severity tried together. However, as the Court in *Hemming* stated, the “prejudice complained about must be more than the same potential for prejudice that every criminal defendant faces when multiple counts are tried together.” 469 Md. at 267 (citing *Joshua*, 976 F.2d at 848). “[T]he logical extension

of [the appellant’s] argument is that a defendant is entitled to separate trials on all charges against [him] because [he] will suffer prejudice if the jury hears evidence regarding more than one charge in a given trial. This is clearly an untenable position that we decline to endorse.” *Joshua*, 976 F.2d at 848.

The appellant has not met his burden of establishing that the court abused its discretion in denying the motion to bifurcate the CIP charges from the primary charges. *See Hemming*, 469 Md. at 243 (explaining that the burden rests upon the defendant to establish that the trial judge’s denial of a motion to bifurcate was an abuse of discretion). Accordingly, we conclude that the court did not abuse its discretion in denying the appellant’s motion to bifurcate the CIP charges from the primary charges.

II.

TEXT MESSAGES

The appellant argues that the circuit court erred in admitting three text exchanges between the appellant and Ms. Nichols in the two weeks before her death because they were irrelevant under Maryland Rule 5-401. The State responds that the court did not err in admitting these messages because they were relevant to show the volatility of the appellant’s relationship with the victim leading up to her killing.

A.

Proceedings Below

At trial, the court admitted the following text exchange over the defense’s objection:

3/27/2020 17:59 (UTC-4)

[MS. NICHOLS]: I’m done

Well since you wanna ignore me now cool keep
that same energy
Bitch
Well I'm bout to go over my ex house bitch I'm
done
I'm bout to be back with my ex goodbye

[APPELLANT]: Bye fuck with him then. That's what you want
you wanted anyway.

[MS. NICHOLS]: Ok

[APPELLANT]: Fuck you and him tell him I said so.

3/27/2020 19:25 (UTC-4)

[MS. NICHOLS]: Cool
Since you want too answer I'm on the way to
your house now
Answer please bae
Answer bae
Please do we can talk
Please answer

[APPELLANT]: What's up

[MS. NICHOLS]: Call me baby

[APPELLANT]: Call me

[MS. NICHOLS] Just called u tf you playing games cool

4/6/2020 18:01 (UTC-4)

[APPELLANT]: Well whatever it is call you can't tell me so I will
talk to you later. You be wanting me to listen to
you and do what you ask me but you just do
whatever you want . That ain't fair Zena.
No response?

[MS. NICHOLS]: You ain't have nothing too say before I left this
morning so whatchu talking bout.

[APPELLANT]: I did but you ain't want to hear it just took your
stuff and rolled. Come home please.

[MS. NICHOLS]: I just need some time we need a huge break

[APPELLANT]: Do you then that’s what this is all about . And I understand.

[MS. NICHOLS]: Whatever

The court admitted these text messages because they were relevant. The court explained that the messages reflected the “state of the relationship,” which the court described as “up and down and all in circles” “every other day.” It further explained:

I do think it is relevant to the fact that the defense can’t come and say that [it was a] perfect relationship, they’re lovey-dovey a hundred percent of the time. But this is not going to turn into closing, well, they hated me on this day, they loved me on this day, they hated me on this day, we’re back in love.

B.

Analysis

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. We review the court’s determination of relevance under a *de novo* standard of review. *See, e.g., Urbanski v. State*, 256 Md. App. 414, 429 (2022). “[A]n item of evidence can be relevant only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case, *i.e.*, one that is *properly provable* in the case.” *Taneja v. State*, 231 Md. App. 1, 11 (2016) (emphasis in original) (quoting *Snyder v. State*, 361 Md. 580, 591 (2000)).

The appellant was charged with first-degree murder, which is “a deliberate, premeditated, and willful killing[.]” Md. Code, Crim. Law § 2-201(a)(1). “Showing that a defendant had a motive to commit a crime simply helps to establish that he [or she] had the requisite *intent* to commit the crime.” *Emory v. State*, 101 Md. App. 585, 606 (1994)

(emphasis in original). Motive is the “catalyst that provides the reason for a person to engage in criminal activity.” *Snyder*, 361 Md. at 604. “Evidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive.” *Id.* at 605. To be relevant as “evidence of motive,” the relationship difficulties must have occurred ““within such time, or show such relationship to the main charge, as to make connection obvious,”” i.e., “they are ‘so linked in point of time or circumstances as to show intent or motive.’” *Id.* (quoting *Johnson v. State*, 332 Md. 456, 470 (1993)); see, e.g., *id.* at 608–09 (explaining that evidence of “disharmony in the household . . . was probative of a continuing hostility and animosity, on the part of the petitioner, toward the victim and, therefore, of a motive to murder, not simply the propensity to commit murder”).

Here, the text messages showed the instability of the relationship in the two weeks before Ms. Nichols was murdered. In the first exchange, Ms. Nichols threatened to return to her ex-boyfriend, which led to vitriolic words. In the second exchange, two hours later, Ms. Nichols appeared to be asking the appellant to answer the phone so they could talk and accused him of “playing games” when he did not answer. In the final set of texts on April 6, the two had another tense exchange, during which Ms. Nichols told the appellant that they needed a “huge break.” These messages were probative of a continuing discord in the relationship in the days leading up to Ms. Nichols’s killing and therefore were probative of a motive to murder. For the reasons stated, the court did not err in concluding that the messages were relevant and admitting them.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY THE
APPELLANT.**