Circuit Court for Baltimore County
Case No. 03-K-17-004466

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1051

September Term, 2019

CRAIG RUSSELL WILLIAMS

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: August 30, 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 jury trial in the Circuit Court for Baltimore County, Craig Russell Williams, appellant, was convicted of first-degree murder, conspiracy to commit first-degree murder, robbery with a deadly weapon, conspiracy to commit robbery with a deadly weapon, and use of a handgun in the commission of a crime of violence. The court sentenced appellant to life imprisonment without the possibility of parole and a concurrent sentence of twenty years' imprisonment. On appeal, appellant presents the following questions for our review:

1. Did the trial court err by admitting other crimes evidence?
2. Did the trial court err by admitting a photograph of appellant making hand gestures that may have been construed as gang signs?

For the reasons set forth below, we affirm the judgments of the circuit court.

BACKGROUND

In the early morning hours of August 8, 2017, Dejuane Beverly was shot and killed during an armed robbery at a bus stop in Woodlawn. Beverly died from a single gunshot wound to the head, fired at close range. Four .45 caliber handgun casings were found near Beverly's body, and his backpack and watch were missing. The State charged appellant with Beverly's murder and related offenses.

At trial, the State introduced evidence that approximately thirty minutes before Beverly's murder, appellant and Kevin Parker, appellant's alleged co-conspirator, robbed and murdered Tyrese Davis in Baltimore City. Like Beverly, Davis died from a single gunshot wound to the head, fired from a .45 caliber handgun at close range.

The State also introduced evidence that on August 15, 2017, one week after Beverly's and Davis's murders, appellant and Parker were riding in a car with William Rogers at approximately 11:00 p.m. when appellant put a gun to Rogers's head and ordered him out of the car. At trial, Rogers testified that appellant shot him twice, hitting him in the back and grazing his leg. Appellant and Parker then drove away in Rogers's car. Six shell casings from a .45 caliber handgun were found at the scene of the shooting.

Approximately twenty minutes after the carjacking, Baltimore County Police Officer Jeffrey Dunham conducted a routine traffic stop of appellant and Parker for speeding. Video from Officer Dunham's body-worn camera showed that Parker was the driver of the car and appellant was the passenger. A short time after the traffic stop, Officer Dunham received information about the carjacking of Rogers's car and realized that he had recently stopped that very car for speeding.

Police arrested appellant on August 19, 2017, and discovered a loaded .45 caliber handgun in his waistband. A search of appellant's girlfriend's vehicle revealed a .45 caliber shell casing as well as Beverly's watch. The parties stipulated that the .45 caliber shell casings found at the scenes of the Beverly, Davis, and Rogers shootings had all been fired from the .45 caliber handgun discovered in appellant's waistband.

Appellant admitted to police that he had been driving with Parker when Parker shot Davis. Regarding Davis's murder, appellant explained that he and Parker drove up behind two boys who were walking in the street, when Parker rolled down his window, pointed the gun at them and told them to give up their money. The boys ran in different

directions and Parker suddenly got out of the car and chased down Davis, demanded his money, and then shot him. Parker then returned to the vehicle and told appellant to drive. Appellant complied. Appellant stated that he continued driving with Parker after Davis's murder because he was concerned that Parker might "turn" on him and shoot him.

Appellant admitted that he was also present at the time of Beverly's murder, but denied knowing that Parker planned to rob and shoot Beverly. According to appellant, Parker robbed Beverly, dragged him into a field, and shot him. When Parker returned to the car, appellant and Parker drove away, and appellant ultimately drove Parker home. The State introduced evidence of Facebook messages appellant sent to Parker prior to Davis's murder, which stated, "That play still on need $ dont get payed till monday" and "Got the car." The State also introduced two versions of a "selfie" photograph obtained from Parker's phone that showed appellant, Parker, and a third individual, Savante Langston, together approximately one hour after Beverly was killed.[1]

Appellant admitted that he and Parker carjacked Rogers together and that he had shot Rogers at Parker's direction. The State introduced evidence of a Facebook message appellant sent to Parker before the carjacking, which stated, "I got 20 for a hack." In a message that Parker sent appellant a few hours later, Parker wrote, "When u go in his pockets use ya shirt."

[1]According to appellant, Langston had been riding in the car with appellant and Parker at the time of the robberies and murders, but Langston did not participate in the crimes.

During opening statements, appellant's counsel claimed that appellant feared Parker would shoot him if he did not cooperate, and that appellant's presence at the scene of Beverly's murder was the result of duress.

DISCUSSION

I.

Appellant first argues that the circuit court erred in admitting "other crimes" evidence concerning the Davis murder and Rogers carjacking. Appellant contends that evidence of his involvement in these other crimes was "gratuitous" and the minimal probative value of that evidence was substantially outweighed by its overly prejudicial nature. The State responds that the circuit court did not abuse its discretion because the evidence was highly probative of both appellant's participation in the robbery and murder of Beverly and appellant's conspiracy with Parker to commit those crimes. The State further contends that the evidence was necessary to rebut appellant's defense of duress, and the probative value of the evidence was not outweighed by the danger of unfair prejudice.

Maryland Rule 5-404(b) prohibits the admission of evidence of "other crimes, wrongs, or acts" for the purpose of proving a defendant's action in conformity therewith. As such, "evidence of a defendant's prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial." *State v. Faulkner*, 314 Md. 630, 633 (1989) (quoting *Straughn v. State*, 297 Md. 329, 333 (1983)). This type of evidence is generally excluded because it "may tend to confuse the jurors, predispose them to a

belief in the defendant's guilt, or prejudice their minds against the defendant." *Id.* (citing *Ross v. State*, 276 Md. 664, 669 (1976)). Evidence of other crimes may be admissible for purposes other than propensity, however, "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)).

Rule 5-404(b) does not prohibit the introduction of evidence of intrinsic acts, or acts that arise out of the same transaction or occurrence for which a defendant is being tried. *Odum v. State*, 412 Md. 593, 611-13 (2010) (holding that evidence of crimes for which defendant had been acquitted at his first trial was admissible at his retrial on kidnapping charges, as the other crimes had "precipitated" and "facilitated" the kidnappings and therefore "arose out of the same criminal episode."); s*ee also* Lynn McLain, *Maryland Evidence State and Federal* §404.5 (3d ed. 2013, 2020 Supp.) ("Acts that are part of the alleged crime itself (such as acts in furtherance of an alleged conspiracy), or put in its immediate context, are not 'other acts' and thus do not have to comply with Md. Rule 5-404(b)." (footnotes omitted)). In *Odum*, the Court of Appeals explained:

> [T]he strictures of "other crimes" evidence law, now embodied in Rule 5-404(b), do not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes. We define "intrinsic" as including, at a minimum, other crimes that are so connected or blended in point of time or circumstances with the crime or crimes charged that they form a single transaction, and the crime or crimes cannot be fully shown or explained without evidence of the other crimes.

Odum, 412 Md. at 611.

The Court further noted that its conclusion that intrinsic crimes do not constitute "other crimes" evidence within the meaning of Rule 5-404(b) was consistent with the interpretation of many federal courts interpreting Federal Rule of Evidence 404(b), from which Md. Rule 5-404(b) was derived. *Id.* at 611-12 (citing *United States v. Chin*, 83 F.3d 83, 87-88 (4th Cir. 1996) (noting its agreement with other circuits as to the admissibility of evidence of acts that were intrinsic to the crime charged, *i.e.*, criminal acts that were "inextricably intertwin[ed]" or where "both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged."); *accord United States v. Bush*, 944 F.3d 189, 196 (4th Cir. 2019) (holding that evidence that defendant consistently purchased cocaine and produced and sold cocaine base was "inextricably intertwined with the conspiracy" charge alleging that he conspired to possess and distribute cocaine).

In cases involving charges of conspiracy, evidence of acts committed in furtherance of a conspiracy offered to establish that the defendant participated in the conspiracy are not "other acts," but direct evidence of the crime charged. *See United States v. Loayza*, 107 F.3d 257, 264 (4th Cir. 1997) (holding that evidence that defendant continued participating in scheme to defraud after the dates set forth in the indictment was admissible as "direct evidence of the scheme to defraud, not Rule 404(b) evidence"); *see also, United States v. McMillon*, 14 F.3d 948, 955 (4th Cir. 1994) (holding that testimony of co-conspirators was admissible where it was "elicited as part of the

groundwork that the government needed to lay to explain to the jury how these individuals fit into the operation of this conspiracy").

In *Wagner v. State*, 213 Md. App. 419, 455-56 (2013), this Court held that an alleged co-conspirator's testimony that she understood defendant's question, "[D]o you want to make some money[?]" to mean that he wanted to commit a robbery, based on her participation in past robberies with the defendant, was not other crimes evidence. We explained that "[the evidence] was admissible to show agreement between [the defendant and alleged co-conspirator], a critical element to the charge of conspiracy" and "highly probative to establish the element of one of the crimes charged[.]"[2] *Id.* at 456; *see also Mitchell v. State*, 363 Md. 130, 146 (2001) ("[C]onspiracy is necessarily a specific intent crime; there must exist the specific intent to join with another person in the accomplishment of an unlawful purpose or a lawful purpose by unlawful means.").

In the present case, the evidence pertaining to Davis's murder and Rogers's carjacking, including appellant's direct participation, was intrinsic to and probative of a conspiracy between appellant and Parker. Moreover, the messages exchanged between appellant and Parker prior to each of those crimes showed their intent to participate in the conspiracy prior to Beverly's murder. The carjacking also showed appellant's willingness to take a more active role in their criminal enterprise, providing evidence that was highly probative to undermine appellant's claim that he had committed the crimes

[2] We also determined that the defendant's use of robbery proceeds to buy drugs was intrinsic to the robbery and probative of his intent and participation in the robbery. *Wagner*, 213 Md. App. at 457-60.

under duress. We conclude that the trial court did not abuse its discretion in determining that the probative value of the Davis murder and Rogers carjacking outweighed the risk of unfair prejudice to appellant.

II.

Appellant also contends that the trial court erred by admitting a "selfie" photo[3] obtained from Parker's phone in which appellant, Parker, and Langston can be seen making gestures with their hands. Appellant argues that the court's admission of the photo was unduly prejudicial because the photo depicted appellant and Parker making gang symbols with their hands, thereby introducing evidence of gang membership into the case despite there being no gang-related charges. Appellant further argues that the prosecutor "exploited the improper prejudice in closing" by arguing, "Look at this picture. . . . Look at what [appellant is] doing with his hands."

The State responds that the photo is highly probative because it undermines appellant's duress theory, thereby outweighing any potential risk that the jury might associate the hand gestures with gang affiliation. The State further asserts that the prosecutor's comment was a fair response to defense counsel's closing argument.

Md. Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make 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." This threshold "is

[3] Two versions of the same photograph were admitted into evidence; the first was a still photograph and the second was a "live" photograph (a brief video without sound).

a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (citing *State v. Simms*, 420 Md. 705, 727 (2011)). We apply the de novo standard of review to a trial court's determination of relevance. *Fuentes v. State*, 454 Md. 296, 325 (2017) (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)).

Rule 5-403 provides, in relevant part, that: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Evidence may be unfairly prejudicial when "it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Burris*, 435 Md. at 392 (quoting *Odum*, 412 Md. at 615). We review the balancing of the probative value against the potential for improper prejudice to the defendant for abuse of discretion. *Page v. State*, 222 Md. App. 648, 666 (2015) (quoting *Oesby v. State*, 142 Md. App. 144, 167 (2002)). A court abuses its discretion "where no reasonable person would take the view adopted by the circuit court." *Williams*, 457 Md. at 563 (citing *Fuentes*, 454 Md. at 325).

Here, we perceive no error or abuse of discretion in the circuit court's decision to admit the photograph. The evidence was relevant and highly probative of appellant's claim that he was under the influence of Parker and that he participated in Beverly's murder under duress. On balance, the risk of unfair prejudice to appellant was minimal because there was no context or additional evidence offered to establish that the photo depicted a "gang sign." *See e.g., Wagner*, 213 Md. App. at 455 (holding that trial court did not abuse its discretion in admitting photo of appellant used in the photo array, where

the photo used was not "obviously" a mug shot). Indeed, appellant has failed to cite to any instance in the record where the State portrayed appellant's hand gestures specifically as gang signs.

With respect to appellant's contention that the prosecutor inappropriately referenced the "gang signs" in rebuttal closing argument, we note that both parties referenced the hand gestures made in the photograph, though neither party identified them as gang-related. In its initial closing argument, the prosecutor told the jury:

> Again, if you believe him that he was just in the car. In the car for two murders, and he's still hanging with Kevin Parker **making these signs**. Bragging about what they just did.

(Emphasis added). Defense counsel also referenced the photo in closing argument:

> And look at this picture for a moment. Especially when you get back to the jury room, who is in front? Whose [sic] got his face grilled into the -- the lens of the camera? **He's got his hands up making signs**.
>
> * * *
>
> I want you to look at his picture. I want you to see that face. I want you to **see the signs that he's making with his hands.**

(Emphasis added). In rebuttal, the prosecutor commented:

> Look at this picture, Mr. Parker just happened to be the one taking this selfie. And look at what [appellant] is doing. **Look at what he's doing with his hands.** What had just happened.

(Emphasis added).

At no point during closing argument or rebuttal did the prosecutor use the word "gang," nor was the prosecutor's reference to appellant's hand gesture an obvious reference to gang affiliation. Because the photograph was useful, maybe even necessary,

for the jury's determination as to appellant's defense of duress, the photo was not unfairly prejudicial and the court did not abuse its discretion in admitting it.

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