Circuit Court for Charles County
Case No. C-08-JV-23-000042

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1149

September Term, 2023

IN RE: J.F.

Graeff,
Ripken,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 30, 2025

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The Circuit Court for Charles County, sitting as a juvenile court, found appellant, 13-year-old J.F., involved in conduct that would constitute the crimes of sexual abuse of a minor and third-degree sexual offense if committed by an adult. The juvenile court placed appellant on probation for one year.

On appeal, appellant presents one question for this Court's review, which we have slightly rephrased, as follows:

> Did the trial court err in precluding cross-examination of appellant's father, Mr. F., about a prior conviction for battery when the defense theory was that Mr. F. fabricated the alleged sexual offense to protect himself from being prosecuted for assault and/or child abuse for a beating he gave appellant that day?

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

FACTUAL AND PROCEDURAL BACKGROUND

On May 15, 2023, the State filed a delinquency petition against appellant. It charged appellant with sexual abuse of a minor, attempted second-degree rape, and sexual offense in the third degree.

On May 31, 2023, the circuit court held an adjudication hearing. Mr. F. ("Father"), the State's only witness, testified that, on the evening of May 9, 2023, he was home with A., his six-year-old daughter, and appellant.[1] Father's girlfriend, A.'s mother, had left home to attend a soccer game with her son.

[1] A. and appellant do not share the same mother. At the time of the alleged offenses, appellant had been living with Father for approximately three years. Father had asked appellant's mother for custody because Father did not believe that appellant's mother and grandmother were able to handle appellant's behavioral problems. Father believed he "could straighten [appellant] out."

Father was watching television in the living room, and he realized that appellant and A., who had been playing loudly in A.'s room, had become very quiet. He decided to check on the children. Father approached the open door to A.'s room and observed A. on the bed, watching a video on her phone. A. was "kind of on her stomach" with her pants pulled down and her genitals exposed. Appellant also had his pants down and his genitals exposed. Appellant had his erect penis pressed against A.'s vagina and buttocks. One of appellant's hands was pushing on A.'s back, and the other was moving on his penis.

Father grabbed appellant by his arm and ripped him off of A. to "contain the situation basically and g[e]t him away from her." A. started crying and shaking. Appellant appeared shocked, but he did not say anything. Father "spanked [appellant's] ass [and] put him in his room." He then called A.'s mother, who arrived home approximately 20 minutes later and "immediately lost it" when she heard what happened. After everyone calmed down, Father called the police.

Father testified that, several months before the incident with A., appellant had taken another child's cell phone at school. In response, Father had "whipped [appellant's] butt." He denied hitting appellant anywhere other than on his buttocks during the encounter, but he acknowledged that, when he hit appellant on the buttocks, appellant "would flop around and that would cause [Father's] hand to hit other parts" of appellant's body, including "his arm or whatever else."

On May 9, 2023, after seeing what appellant had done to A., Father used an open hand to repeatedly hit appellant on his buttocks.[2] He stated that he also accidentally hit appellant on his arm as appellant moved around. Father denied hitting appellant anywhere else on his body.

Defense counsel asked Father if he had previously been convicted of battery when he lived in another state. As discussed in further detail, *infra*, the State objected to the question, and after a colloquy, the court sustained the objection, finding that the evidence regarding Father's prior battery conviction was not admissible under any of the exceptions listed in Maryland Rule 5-404(b).

After the court's ruling, Father's testimony continued. He agreed that he was aware that teachers are mandatory reporters of suspected child abuse, and he again stated that he had only hit appellant on the buttocks and on his arm on May 9, 2023. He testified that the police had questioned him about marks on appellant, and he responded by explaining that he had "whipped [appellant's] ass."

Defense counsel then submitted into evidence photos of appellant taken on May 9, 2023, after the incident with A. The photos show appellant with bruising on his face, scratches on his body, and marks on his back. Father again denied any physical discipline other than smacks to appellant's buttocks and possibly to his arm.

[2] Father is 6'2" tall and weighs approximately 198 pounds. Appellant is approximately 5'2" tall and weighs 100 pounds.

On redirect examination, Father explained that appellant sometimes came home complaining that he had been hurt while playing with other kids. On the night of the incident, after he locked appellant in his room, Father heard loud banging and screaming coming from appellant's room. On recross examination, Father stated that, as far as he knew, appellant did not have a black eye or bruises and scratches on his back when he returned from school on May 9, 2023, but appellant did have a red mark on the side of his face and redness on his arm.

At the conclusion of Father's testimony, the State rested its case. Appellant moved for judgment of acquittal as to all counts. The court granted the motion as it related to attempted second-degree rape, and it denied the motion as to the remaining counts. Appellant did not put on any evidence, and the court denied his renewed motion for judgment of acquittal at the close of the entire case.

Throughout the hearing, appellant made clear that his defense centered on the assertion that Father fabricated the alleged sexual offense as a means of protecting himself from charges of battery and/or child abuse after beating appellant and leaving noticeable marks on his body. Defense counsel's opening statement, which we quote in its entirety, related to that contention:

> Your Honor has heard from the State that they intend to call one witness and this one witness is not a credible witness. This one witness, [Father], is an individual who beat his 13-year-old son, he beat his 13-year-old son bad enough that there were visible marks on [his] face and all across his body. Not just new marks, but scratches, bruises, things that don't develop in an hour or two after an incident.

> And [Father] beat [appellant] so bad that he started to get worried, his daughter was freaking out, she was crying because she saw her father beat her brother. And so he had to come up with an elaborate story to justify his behavior, to deflect the attention away from him.
>
> The State only intends to call [Father] because there are no other witnesses, because this didn't happen. This is [Father's] version of the story that he had to tell because he went too far when disciplining [appellant] on May 9th of 2023.
>
> I ask Your Honor to keep that in mind, anything that [Father] was to say is covering himself, is protecting himself, knowing that he left marks on his 13-year-old son who is half his weight, he left visible marks that [appellant's] teachers were going to see at school and he had a six-year-old daughter who was crying hysterically because of what he had done to [appellant].
>
> At the end of this adjudication we are going to ask Your Honor to find [appellant] not involved because [Father] is just not a credible witness.[3]

In closing argument, the State argued that Father's testimony reflected "abject disgust, anger, horror at everything he saw," rather than fear that "he was going to get charged with beating his son and made this all up as an excuse." The prosecutor stated that she had to push Father to give his testimony, noting that he was "torn between . . . two children." Every time Father was asked, he stated that he was "absolutely certain" that he had observed sexual contact between appellant and A.

Defense counsel countered that "there was no sexual contact because this incident did not occur." Rather, appellant "got in trouble" with Father; Father "got mad and he created a story." He used the story to explain how appellant got marks on his body to both

[3] Given the nature of appellant's defense, and based on appellant's opening argument, the juvenile court invited an outside attorney to advise Father of his Fifth Amendment rights against self-incrimination prior to his testimony.

the police and appellant's teachers, and Father's attempt to cover up his actions made him not credible as a witness.

In rebuttal, the State pointed out that Father had not been embarrassed to tell the court that he had beaten appellant on the night in question, and he did not seem concerned that appellant's injuries would be an issue. Regarding the injuries demonstrated in the photos, Father testified that, after he locked appellant in his room, he heard loud noises and banging, which could have caused some of appellant's injuries. Regardless of the nature and extent of the injuries to appellant, the court's sole focus should be on the evidence that appellant's erect penis came into contact with A.'s exposed genitals.

The juvenile court found that Father's testimony about what he observed on May 9, 2023, was specific and credible, particularly because his testimony about beating his son was not favorable to him. Father's testimony that he immediately separated appellant from A. and called the police, as well as his demeanor on the witness stand, which included trembling, shaking, and crying, enhanced Father's credibility. The court found that the State had proved, beyond a reasonable doubt, the elements of the remaining charged offenses. It found appellant involved in the offenses of sexual abuse of a minor and third-degree sexual offense.

The court released appellant to live at his grandmother's house in another state pending disposition. Following the disposition hearing, the court placed appellant on probation for one year.

This appeal followed.

DISCUSSION

Appellant contends that the juvenile court erred in precluding him from questioning Father relating to a prior conviction for battery. He argues that this testimony was relevant to show: (1) Father's propensity to commit battery; and (2) that Father had a motive to lie to avoid a second battery prosecution. Appellant asserts that, pursuant to *Sessoms v. State*, 357 Md. 274 (2000), and Maryland Rule 5-616(a), the defense had a right to question Father about his lack of credibility and motive to lie for impeachment purposes.

The State makes several arguments in response. First, it argues that appellant's argument that the evidence was admissible under Rule 5-616 is not preserved for this Court's review because it was not raised below. Second, it argues that, to the extent that the court erroneously relied on Rule 5-404(b) to exclude the evidence, it did so based on appellant's reliance on that rule, and therefore, appellant is not entitled to relief under the invited error doctrine. Third, it argues that the court properly exercised its discretion in refusing to allow defense counsel to cross-examine Father about a prior battery conviction. Finally, it argues that, even if the court erred, any error was harmless beyond a reasonable doubt.

I.

Proceedings Below

Before discussing the parties' arguments, we set forth in detail the colloquy that occurred below. After defense counsel asked Father if he had previously been convicted

of battery while living in another state, the State objected. Initially, it stated that the question was not phrased properly. The following then occurred:

> [State]: It is very specific in the rules how that question is to be asked. Were you, when you were over the age of 18, and within the last 10 years, and I would like to know that this has been appropriately screened and that it's properly brought up before this Court and the -- that's why the question is to be asked in a particular way.
>
> [Court]: [Defense counsel], your response.
>
> [Defense]: There's no limit actually on him being over the age of 18 and what I'll say is that the State did not disclose previous convictions to me as they should have.
>
> [Court]: Right, but that wasn't the --
>
> [Defense]: I got one page yesterday.
>
> [Court]: -- what the objection was. The objection was what needs to be laid out as a foundation for this to come in.
>
> [Defense]: I, I don't, I've never seen a rule that says you have to ask were you over the age of 18 at that time.
>
> [Court]: Well --
>
> [Defense]: Questions can be asked --
>
> [Court]: Well it would matter if it were a juvenile case or --
>
> [Defense]: What was that?
>
> [Court]: -- or an adult case, right? It would matter if this was as a juvenile.
>
> [Defense]: Right, then it might be, it might be a protected case, right, but that's not what the State's objection was, they were as to the phrasing of my question.
>
> [State]: Well the phrasing --

[Defense]: So they say it's not admissible, that's a different question, right, and then they would have had to provide me with his record and we could talk about what is and isn't admissible. They never provided me with his record. I am working off of information I found publicly, so I'm not using any protected information, it's all available if they had just done a quick search through Indiana's case records, so it -- this isn't protected information that I'm getting into in any way.

[State]: Well we did pull his record and there was nothing on his record. But what I am getting at is that this information is only admissible if the conviction was an adult, an adult conviction. Also, it's only admissible in this proceeding if it's -- has occurred within the last 10 years; so I just want to make sure that before we're asking all of this we have gone into those matters. There are rules about admissibility of bad conduct on prior convictions and they are very specific about what comes in and what doesn't. And I will just answer that until my computer shut down PDK again, I was actually looking to see if he had a record and I saw no convictions. I saw no charges, but --

[Court]: [Defense counsel], was this within the last 10 years?

[Defense]: I can look at the records for that, there were definitely violations of probation that were more recent, but the rules don't say that it has to be within the 10 -- the last 10 years if we're talking about other crimes, wrongs or acts. The 10 year rule is more about specific kinds of evidence that we're trying to introduce. That's not what I'm introducing. I'm introducing 5-404, B, evidence of other crimes, wrongs or acts.

[Court]: Are you -- sorry, you're citing some Maryland rules or Courts and Judicial --

[Defense]: Maryland Rule 5-404, it's Maryland -- sorry, Maryland Rules.

[Court]: 5-

[Defense]: 404. And I will just add, while the Court --

[Court]: Wait, can you give me a second.

[Defense]: Yes, sorry.

[Court]: I want to read this before I hear any more argument. Okay, under 5-404, I'm looking at other crimes, wrongs or acts; is that what you were referencing?

[Defense]: Yes, that is what I was referencing.

[Court]: Okay, it says evidence of other crimes, wrongs or other acts, including delinquent acts, is defined by a code, Courts Article Section 3-8, A, 01, is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident or in conformity with. Which one of those is what you believe this exception would be, under 5-404? And I heard you talking about motive before, but this battery, unless it was against [appellant] or somebody that's directly connected to this, I don't see the motive connection.

[Defense]: So, Your Honor, yeah, Your Honor, the State had objected earlier to my entire line of questioning saying Corporal punishment isn't illegal, but this specific individual has gotten in trouble before for battery, exactly what he's saying that he did. And while there may be a defense I was disciplining my child appropriate --

[Court]: Battery against who?

[Defense]: I, Your Honor, the records don't tell me who the battery is against, but that doesn't make -- that means that [Father] is aware that one could be charged for battery and one could be convicted and incarcerated for battery because he has previously been.

[Court]: But what would that -- how does that fit under 5-404, B, because I'm reading it, and it says it can come in -- it says it can't come in to prove the character of a person to show that their action is in conformity therewith, unless, however, it may be admissible for proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413. So unless I know that the battery has to do with [appellant], then that would be something a little bit different because then that, then that would go to your motive argument that you referenced earlier, otherwise I don't see how it would fall under rule dash -- Maryland Rule 5-404.

[Defense]: So, Your Honor, it would go to motive, it would go to intent, it would go to knowledge, to many of the other exceptions that are listed in 5-404, B, as to evidence of other crimes, wrongs or acts. The reason why it's relevant in this case, because really what this essentially comes down to, right, that a person who is on trial, usually the Defendant, in this case it's not the Respondent who we're talking about, the protections are really meant for the Respondent, but that's not what we're talking about, we're talking about a witness here, but the entirety of this case comes down to this one witness that the State is calling and this one witness has a motive, has an intent, has knowledge that his behavior on May 9th of 2023 was against the law.

[Court]: I don't doubt the connection with the motive if the prior battery that you're referencing involved [appellant], otherwise it falls in the first part, which it seems to be being used to prove that there was an action in conformity therewith. That's where it seems to fall, or at least that's how I'm ruling, because it doesn't fall, to me, under the motive for this incident unless that battery was related to [appellant] and it appears to be that that's not the information. And I also never got the information as to whether this battery was within the last 10 years and if it's something that we should even be discussing, so that was the other part of the information that I was missing.

[Defense]: Yes, and, Your Honor, I don't, I can pull up the conviction, if I have a second here.

[State]: Well I think we've just disposed of the issue. I mean we don't need to know if it's been within 10 years anymore, correct?

[Defense]: I don't know that there's a requirement that it be within 10 years, there's -- for certain other exceptions to character evidence there is the requirement that it be under 10 years -- within the last 10 years, but there's no exception under 404, B, as to it having been in the last 10 years.

[Court]: Okay.

[Defense]: Those I think are more along the lines of character evidence as to truthfulness --

[Court]: Okay.

[Defense]: -- I think is where the 10 years really applies.

[Court]: Where the conviction for that character trait, okay.

> [State]: Okay.
>
> [Court]: I don't find that it falls into the second part of that rule for 5-404, I find that it falls -- that it's trying to be used for an act conforming therewith, therefore I'll sustain the objection and you can move on to your next question, [defense counsel].

II.

Sessoms v. State

On appeal, appellant relies heavily on *Sessoms v. State*, 357 Md. 274 (2000). In that case, the Supreme Court of Maryland addressed the scope of Maryland Rule 5-404(b), which provides as follows:

> Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8A-01 is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

The Court held that this rule applies to protect defendants from undue prejudice, but it does not apply to exclude acts by other people, including witnesses. *Sessoms*, 357 Md. at 281, 291.

In that case, Sessoms alleged that he had been falsely accused of rape by the victim, who was lying to cover for her brother's involvement in robbing him and another individual named Pitman. *Id.* at 279. At trial, Sessoms sought to introduce evidence regarding Pitman's robbery by the victim's brother as a means of bolstering his defense against the rape allegations. *Id.* at 279-80. The circuit court excluded the evidence on Rule 5-404(b) grounds. *Id.* at 280.

The Supreme Court noted that evidence of the other robbery by the victim's brother within hours of her "alleged rape and [defendant's] beating may have been relevant to [defendant's] defense," which was that he was the victim of a robbery by the alleged rape victim's brother and that she had falsely accused him of rape to cover for her brother's involvement in the two robberies. *Id.* at 291. The Court noted that, although the evidence Sessoms sought to present "did not directly point towards someone else committing the crime," it provided a theory of the case that attempted to exculpate him, and the circuit court's decision to exclude this evidence "was based on the trial judge's erroneous interpretation of the law of other crimes evidence." *Id.* at 291-92. The Court held that the circuit court's decision to exclude the evidence had denied the defendant "an opportunity to fully present this theory of the case and fully mount a defense to the accusations against him," and it concluded that the evidence should not have been suppressed on Rule 5-404(b) grounds. *Id.* at 292.

The Court further held that the trial court erred by excluding evidence of the Pitman robbery because the evidence was "clearly admissible under Maryland Rule 5-616(b)(3)." *Id.* at 294. Rule 5-616(b)(3) provides:

> Extrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it.

The Court noted that the heart of Sessoms' argument was that both the victim and her brother lied to conceal criminal activity committed by the victim's brother. *Id.* at 292.

Because the defense rested on the credibility of the victim and her brother, evidence of the Pitman robbery should have been permitted pursuant to Rule 5-616(b)(3). *Id.* at 294.

III.

Preservation

With that background in mind, we turn to the parties' arguments. The State initially contends that appellant's argument in reliance on Rule 5-616(a)(4) is not preserved for this Court's review. We agree.

"It is well-settled that an appellate court ordinarily will not consider any point or question 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Robinson v. State*, 404 Md. 208, 216 (2008) (quoting Md. Rule 8-131(a)). The purpose of the preservation rule is to "prevent[ ] unfairness and requir[e] that all issues be raised in and decided by the trial court." *Vanderpool v. State*, 261 Md. App. 163, 188 (alterations in original) (quoting *Peterson v. State*, 444 Md. 105, 126 (2015)), *cert. denied*, 487 Md. 461 (2024).

Here, defense counsel relied solely on Rule 5-404(b) in seeking to admit evidence of Father's prior battery conviction. He never mentioned Rule 5-616(a)(4) in the extensive colloquy below. Accordingly, we will not consider the argument in that regard on appeal.

IV.

Harmless Error

Appellant additionally contends, however, relying on *Sessoms*, 357 Md. at 281-82, that the court erred when it applied Rule 5-404(b) to preclude questioning regarding a prior

battery conviction. The State concedes on appeal that Rule 5-404(b) does not apply to a witness, and it was not proper to exclude the evidence based on that rule. It argues, however, that reversal is not required because: (1) any error in that regard was invited error; (2) the court properly exercised its discretion in excluding the evidence on the ground that it was not relevant; and (3) even if the court did err, any error was harmless.

We need not address the State's arguments regarding the invited error doctrine or relevancy because, even assuming that the court erred in excluding the evidence, any error was harmless and does not require reversal of the court's finding that appellant was involved in the offenses. Although we agree with appellant that Father's credibility was critical in this case, we disagree that admission of evidence of a prior battery conviction would have affected the judge's verdict.

The standard for harmless error is well established:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed harmless and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.

Gross v. State, 481 Md. 233, 254 (2022) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). "In determining whether an error prejudiced the defendant, that is, whether the error was harmless, 'the determinative factor . . . has been whether or not the [error], in relation to the totality of the evidence, played a significant role in influencing the rendition of the verdict, to the prejudice of the [defendant].'" *Sivells v. State*, 196 Md. App. 254,

288 (2010) (alterations in original) (quoting *Degren v. State*, 352 Md. 400, 432 (1999)). "We must 'be 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.'" *State v. Heath*, 464 Md. 445, 466 (2019) (quoting *Dorsey*, 276 Md. at 659).

Here, there was no question that Father hit appellant on May 9, 2023. Defense counsel, in her opening statement, focused solely on appellant's claim that Father had fabricated the sexual offenses to stave off charges of assault or child abuse. Father admitted in his testimony that he beat appellant on the day of the alleged offenses and had beaten him before. Father admitted to the police that he had beaten appellant, and he testified that he knew that appellant's teachers were mandatory reporters of suspected child abuse. In closing argument, defense counsel argued that Father knew he could get in trouble for leaving marks on appellant, stating that gave Father a motive to lie about the cause of the beating.

The court, in finding Father's testimony about the sexual offenses to be credible, noted Father's admission of beating appellant:

> The things that he testified to were not favorable to him, specifically he said I spanked his ass, I whipped his ass, I whooped his ass, I whooped his butt, I drug him to his room, I grabbed him, I threw him in his room. He described a number of specific negative things that he did in reaction to this incident.

The court addressed other aspects of Father's testimony, as follows:

> His testimony regarding his behavior afterwards was also credible, the Court found that to be credible, that he isolated [appellant] away from [A.] and waited for his girlfriend, who is [A,'s] mother, to get home and then the

> contacting of the Police to take the report. [Father] also, in looking at him visually, which the Court had the opportunity to do, noticed him visibly trembling, shaking, crying, snot running down his nose, falling off of his face into his shirt. The Court found his response to this incident to be credible as well as his testimony to be credible and even on cross-examination when asked questions that were, again, not favorable to him, he continued and stood fast in what it was that he did post observing this interaction between his two children.

The trial court, the finder of fact, gave a detailed recitation of why it found Father's testimony credible. *See Geiger v. State*, 235 Md. App. 102, 112-13 (2017) (noting that a decisive factor in a harmless error analysis may be who is the finder of fact in a case, "a volatile jury [or] a legally trained and steadfast judge"). The court's recitation specifically included that the witness admitted to beating appellant. Based on the record here, we are satisfied that evidence about a prior battery conviction would not have contributed to the court's finding on the charged offenses here. Accordingly, any error in excluding that evidence was harmless.

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