

Circuit Court for Charles County
Case No. C-08-CR-21-00134

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1798

September Term, 2021

MELISSA ANN RUSSELL

v.

STATE OF MARYLAND

Reed,
Albright,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: February 21, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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 two-day trial, a jury at the Circuit Court for Charles County found the appellant, Melissa Ann Russell, guilty of second-degree assault.¹ Ms. Russell was sentenced to seven years' imprisonment, to run consecutively to any of Ms. Russell's previously-imposed sentences. This timely appeal followed.

Ms. Russell raises one issue on appeal, which we have reworded as:²

Did the trial court err or abuse its discretion in admitting testimony regarding Ms. Russell's conduct at the time she was being detained?

For the reasons that follow, we affirm.

FACTUAL BACKGROUND

On the evening of March 22, 2021, Ms. Zhataea Baker drove her mother and her two brothers to the drive-thru window at McDonald's on Crain Highway in Waldorf, Maryland. While attempting to leave the parking lot, Zhataea³ encountered Ms. Russell and another individual near her car. The encounter ended with Ms. Russell stabbing Zhataea in the hand with a knife and Ms. Russell being arrested. Ultimately, Ms. Russell was charged with first-degree assault, second-degree assault, and wearing and carrying a

¹ The circuit court granted Ms. Russell's motion for judgment on wearing and carrying a dangerous weapon. The jury acquitted Ms. Russell of first-degree assault.

² As originally phrased, Appellant's question was as follows:

1. Did the trial court err in admitting testimony regarding Ms. Russell's conduct at the time she was being detained?

³ For clarity, we refer to Zhataea Baker, the victim, and her mother, Zatecea Baker, by their first names. We mean no disrespect by doing so.

dangerous weapon.

At the trial, the State’s theory was that Ms. Russell used the knife to attack Zhataea with intent to cause her serious physical injury. Ms. Russell’s theory (as shown from her counsel’s opening statement) was that Zhataea initiated the incident. Specifically, Ms. Russell theorized that Ms. Russell and Zhataea “had words” after Ms. Russell walked in front of Zhataea’s car as Zhataea was trying to leave the parking lot. Thereafter, according to Ms. Russell’s counsel, Zhataea “was looking for some trouble,” and Zhataea’s injuries resulted from Zhataea’s decision to fight Ms. Russell.

At trial, the State called Zhataea, her mother, Zatecea Baker, and her brother, Terojhe Baker,⁴ all of whom witnessed the attack. Zhataea, the victim, testified that after retrieving the order from the drive-thru window, she attempted to leave the drive-thru lane but saw Ms. Russell and another individual walking in front of her car. Zhataea attempted to drive around them when she saw in her rear-view mirror that Ms. Russell was yelling at her and making hand gestures. Zhataea then rolled down the window to ask if there was a problem. Ms. Russell then approached Zhataea’s vehicle and swung at her but did not make any contact. Zhataea then attempted to get out of her car, considering whether to fight Ms. Russell.⁵ By this time, Ms. Russell, who had retreated to where the

⁴ The State also called Michael Turner of the Waldorf Volunteer Fire Department, who provided emergency medical services (“EMS”) to Zhataea; Officers Matthew Neal and Casey Phillips of the Charles County Sheriff’s Department, both of whom arrived at the scene after EMS personnel.

⁵ Zhataea’s testimony was:

man was standing, was on her way back towards Zhataea's car.

According to Zhataea, her brother, Terojhe Baker, yelled that Ms. Russell had a knife, and Zhataea remained in the vehicle. Ms. Russell then leaned on Zhataea's car door and tried to cut Zhataea's neck with the knife, but because Zhataea used her hand to shield her face, she was only cut on her hand. Ms. Russell then retreated from the driver side of the car momentarily before starting toward the car again.

Zhataea put the car in drive and drove the car over the curb and across the road before pulling into a 7-Eleven, where her mother called the police. After the police arrived and Zhataea received medical care, she described her assailant to one of the officers. Zhataea was escorted to the McDonald's a short time later, where law enforcement conducted a show-up, and Zhataea identified Ms. Russell as the person who stabbed her. During her testimony, Zhataea identified a photograph of the stab wounds on her hand.

Zatecea Baker, Zhataea's mother, who was in the passenger seat, testified that

[STATE]: Okay. So, why were you trying to get out? What were you gonna do?

[ZHATAEA]: If I was to get out [of the car,] I was probably would have fought (unintelligible).

[STATE]: I'm sorry, you would have what?

[ZHATAEA]: Fought.

[STATE]: Okay. And is that because she swung at you?

[ZHATAEA]: Yes, ma'am.

after leaving the drive-thru window, a woman (Ms. Russell) and a man were walking by the passenger side of the car. When the woman walked in front of the car, Zhataea attempted to drive around her. From behind the vehicle, Ms. Russell was saying something and making hand gestures. Zhataea stopped, rolled down her window, and asked if there was a problem. According to Zatecea, Ms. Russell came up to the driver's window, reached in, "[went] right at my daughter's face," and "tried to hit her." Zhataea wanted to get out of the car, but Zatecea and her son held Zhataea back. Zatecea then heard her son say that Ms. Russell had a knife, and Zatecea saw blood. The knife nipped Zatecea's hand. Zatecea told her daughter to pull over, but she drove across Crain Highway to a 7-Eleven, where Zatecea called police. According to Zatecea, her daughter was never aggressive toward, threatened, or attacked Ms. Russell.

Terojhe Baker also testified that his sister did not attack, punch, threaten to harm, or have a weapon to attack Ms. Russell. Mr. Baker was riding in the back seat. He testified that after leaving the drive-thru window, his sister stopped at the stop sign and heard two males⁶ and a female (Ms. Russell) say something behind the car. The female then walked up to the driver's window and threw a punch at his sister. The female then "backed up from the car[,] and went to the male. Mr. Baker then "saw a knife in someone's hand[,] warned "[t]hey have a knife[,] and pulled his sister's hair to alert her. According to Mr. Baker, Ms. Russell tried to stab Zhataea with the knife. Afterward, Mr. Baker, his sister, mother, and brother went to 7-Eleven and called the police.

⁶ The other eyewitnesses testified to the presence of one male.

In addition to testimony from Zhataea, her mother, and her brother, the State called Officers Michael Skodzinski and Casey Phillips, who testified about what happened after they arrived on scene. Officer Skodzinski testified on direct examination that Ms. Russell became disorderly and started screaming when Officer Phillips exited the McDonald's with her identification in hand.

[OFFICER SKODZINSKI:] Officer Phillips had her ID card. We were conducting, trying to set up a show up with the victim. He went to go exit the McDonald's, go out to the parking lot where the victim was gonna be coming. Myself and other officers stood by McDonald's with the defendant. She got upset that he would not give her ID back, chased after him. Had to grab her by the arm. McDonald's had like a chain hooked up inside there where that part of the store, tables blocked off. She fell over the chain, and we ended up detaining her because she became disorderly and started screaming.

Counsel for Ms. Russell objected on the ground that Officer Skodzinski's testimony introduced inadmissible evidence of other crimes to show propensity and was prejudicial and irrelevant to the crimes charged.

[COUNSEL FOR MS. RUSSELL]: Your Honor, when the police officer is testifying to disorderly that's other crimes evidence. She's not charged with being disorderly. And the State can't elicit other crimes evidence to show a propens— to show a propensity of her acting in a certain manner. Disorderly conduct is an actual crime that can be charged. And she, they cannot elicit any evidence about other crimes unless it's to show motive, intent, as a mistake, identification, and those exceptions. So, testimony as to another charge - - another crime that's not charged is inappropriate. And it's extremely prejudicial.

* * *

[COUNSEL FOR MS. RUSSELL]: But Your Honor, that's

not, that's not relevant. What's relevant is whether there was a first-degree assault, and a second-degree assault. [The prosecutor] has asked questions about the procedure and that time, but asking about other crimes, disorderly conduct and things like that that's inappropriate, and it's not admissible underneath the Rule that other crime evidence cannot be admitted.

The trial court did not agree with Ms. Russell and denied the objection.

[THE COURT]: I understand everything that's being argued here. I do not take the word disorderly as something the general public would pick up as a crime, therefore I, I -- the only remedy at this point would be to just, to strike that. I believe that the defendant's actions at the time are relevant, and I will allow them in. So, I'm gonna deny the objection.

Officer Phillips testified about retrieving a knife from the man that was with Ms. Russell at the scene. As to how the knife's blade operates, Officer Phillips said the blade either has to be pulled out or, using a switch at the knife's back, the blade folds out. He added that the knife's blade locks in place.

When the State concluded its case-in-chief, Ms. Russell moved for acquittal on the dangerous weapon charge, a motion the trial court granted because the State had not offered evidence that the knife was not a penknife without a switchblade.⁷ Ultimately, the jury acquitted Ms. Russell of first-degree assault but found her guilty of second-degree assault.

⁷ Section 4-101(a) (5) (ii) of the Criminal Law Article provides that "weapon" does not include "a penknife without a switchblade."

STANDARD OF REVIEW

Two different standards govern our review of the trial court’s evidentiary rulings. As to the admissibility of evidence, “[a] trial court’s ruling . . . is generally reviewed for abuse of discretion.” *State v. Young*, 462 Md. 159, 169 (2018). “Once a trial court has made a finding of relevance, we are generally loath to reverse the trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.” *Decker v. State*, 408 Md. 631, 649 (2009) (omitting citations). As with rulings of relevancy, the trial court’s admission of “relevant evidence over an objection that the evidence is unfairly prejudicial” is reviewed for abuse of discretion. *Thomas v. State*, 397 Md. 557, 579 (2007). This includes the weighing of the probative value of a particular piece of evidence as against the danger of unfair prejudice that may result from its admission. *See State v. Simms*, 420 Md. 705, 725 (2011). But we review *de novo* the trial court’s determination that evidence “is or is not of consequence to the determination of the action.” *Id.* at 724-25 (citing *Ruffin Hotel Corp. of Maryland, Inc. v. Gasper*, 418 Md. 594, 619 (2011)).

DISCUSSION

Ms. Russell contends the circuit court erred in admitting Office Skodzinski’s testimony about her becoming disorderly and starting to scream (“Ms. Russell’s conduct” or “her conduct”). Specifically, Ms. Russell contends that evidence of her conduct was irrelevant under Md. Rule 5-402 “as it had no tendency to prove that Ms. Russell” assaulted Zhataea. Next, Ms. Russell argues that evidence of her conduct was

inadmissible “propensity evidence,” and that even as “other crimes evidence” under Md. Rule 5-404(b), the evidence was inadmissible because the trial court failed to undertake the three-step analysis of “other crimes evidence” required by *State v. Faulkner*, 314 Md. 630, 634 (1989).⁸ Finally, Ms. Russell contends that evidence of her conduct was inadmissible as unfairly prejudicial under Md. Rule 5-403. We disagree with all of these contentions and take up Ms. Russell’s second contention first.

Here, because Ms. Russell’s conduct at the McDonald’s was not an “other act” within the meaning of Md. Rule 5-404(b), it was not inadmissible under Rule 5-404(b); nor was the trial court required to do the three-step *Faulkner* analysis. To be sure, evidence of an act other than the one charged is inadmissible “to prove the character of a person in order to show action in the conformity therewith.” Md. Rule 5-404(b).⁹ “The ultimate end to be served by the ban on “other crimes” evidence is that the State should

⁸ The *Faulkner* analysis requires that before admitting “other bad act” evidence under Md. Rule 5-404(b), the trial court must determine (1) whether the evidence fits within one or more of the Rule 5-404(b) exceptions; (2) whether the accused’s involvement in the “other bad act” is established by clear and convincing evidence; and (3) whether the probative value of the “other bad act” evidence is substantially outweighed by the potential for unfair prejudice likely to result from its admission. *Snyder v. State*, 210 Md. App. 370, 393 (2013) (citing *State v. Faulkner*, 314 Md. 630, 634 (1989) and other cases). In addition, the trial court should state its reasons for admitting such evidence in order to enable appellate review. *Streater v. State*, 352 Md. 800, 810 (1999).

⁹ “Other acts” may be admissible if offered for other purposes, however. Md. Rule 5-404(b) (“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.”).

not be permitted to bring in ‘out of left field’ the fact that on some other occasion, the defendant committed a crime.” *Odum v. State*, 412 Md. 593, 611 (2010) (omitting citations).

But if something other than the crime charged happens at a crime scene, “that coincidental possibility does not necessarily engage the gears of other crimes evidence law.” *Odum*, 412 Md. at 611 (cleaned up). Indeed, Md. Rule 5-404(b) does not apply to acts that arise “during the same transaction and are intrinsic to the charged crime or crimes.” *Odum*, 412 Md. at 611. “Intrinsic” means “at a minimum, ‘other crimes [or acts] 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 charged cannot be fully shown or explained without evidence of the other crimes.’” *Id.*

Here, Ms. Russell’s conduct at the McDonald’s was “intrinsic” to the assault. Ms. Russell asserts that her conduct could not be intrinsic because there were “intervening events” between the assault on Zhataea and her interactions with investigating officers. Specifically, Ms. Russell notes that, after the assault, officers had a conversation with her in the McDonald’s, took custody of her identification card, and tried to arrange a show-up with Zhataea. Ms. Russell’s conduct during that interaction, however, occurred close in time and place to the assault. And while the assault itself may have been over, the on-scene investigation of it was not. Zhataea still needed to identify Ms. Russell to police, and the police needed to determine who the aggressor was. Thus, Ms. Russell’s conduct

during the on-scene investigation arose directly from the assault.¹⁰ Further, as we explain below, Ms. Russell’s conduct at the McDonald’s was also relevant in multiple ways.

Ms. Russell’s theory was that Zhataea initiated the fight. But Ms. Russell’s conduct with the officers shortly after the assault made it more probable than not that her demeanor was similar shortly beforehand with Zhataea. Md. Rule 5-401 (“‘Relevant evidence’ means 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.”). Thus, Ms. Russell’s conduct tended to contradict Ms. Russell’s theory that it was Zhataea that started a fight.

Ms. Russell’s conduct at the McDonald’s was also relevant as circumstantial evidence of her “consciousness of guilt.” “A person’s post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person’s state of mind. . . . [which] may be relevant [] because . . . the commission of a crime can be expected to leave some mental traces on the criminal.” *Thomas v. State*, 372 Md. 342, 352 (2002). The probative value of such evidence turns on whether a jury can reasonably infer:

¹⁰ Similarly, in *Odum*, our Supreme Court held that conduct occurring after a crime could be “so connected or blended in point of time or circumstances with the crime . . . that they form a single transaction[.]” *Odum*, 412 Md. at 612-13. There, the Court concluded that the later use of robbery proceeds to buy drugs “arose out of the same criminal episode[.]” even though the robbery occurred in Prince George’s County, Maryland, and the drug transaction did not occur until later that evening, after the assailants drove to Southeast Washington, D.C. *Id.* at 597-98, 613.

(1) from the defendant's behavior [that she resisted being placed in custody]; (2) from [defendant's resistance to being placed in custody] to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

Thomas, 372 Md. at 351-52 (omitting citations).

From Ms. Russell's attempt to chase Officer Phillips for her identification card and then her resistance to being detained, the jury could reasonably make the inferential steps needed to conclude that Ms. Russell was the one that attacked Zhataea. Specifically, from Ms. Russell's attempt to regain her identification card before the show-up, the jury could infer that Ms. Russell wanted it back so that she could leave before the show-up. From Ms. Russell's unwillingness to await the show-up, the jury could infer that Ms. Russell did not want to be identified by Zhataea. From Ms. Russell's unwillingness to be identified, the jury could infer that Ms. Russell was conscious of her guilt of the crime charged. And from Ms. Russell's consciousness of her guilt of the crime charged, the jury could infer her actual guilt of the crime charged. *Thomas*, 372 Md. at 351-352. All are reasonable inferences that the jury could have drawn in this case.

Nor do we see any abuse of discretion in the trial court's conclusion that Ms. Russell's conduct at the McDonald's was not more prejudicial than probative. Even if "relevant," evidence may nonetheless be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[,]" Md. Rule 5-403. "[P]robative value is outweighed by the danger of *unfair* prejudice when the evidence produces such an emotional response that logic cannot

overcome prejudice or sympathy needlessly injected into the case.” *Odum*, 412 Md. at 615 (emphasis added; internal citations and quotations omitted). Here, we see nothing about Ms. Russell’s conduct that would have produced “such an emotional response” in the jury that they were unable to overcome hearing the evidence. That the jury acquitted Ms. Russell of first-degree assault, the most serious charge Ms. Russell faced, suggests that the jury was not overcome by an emotional response and carefully weighed the evidence.

Further, even if the trial court abused its discretion in admitting Ms. Russell’s conduct at the McDonald’s, the error was harmless beyond a reasonable doubt. Error is “harmless” when “the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.” *Ross v. State*, 276 Md. 664, 674 (1976). In other words, an error is harmless if it is “unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.” *Bellamy v. State*, 403 Md. 308, 332 (2008).

Here, the jury heard from three eyewitnesses that Ms. Russell attacked Zhataea, not that Zhataea initiated a fight with Ms. Russell. Specifically, Zhataea, Zatecea, and Zhataea’s brother all testified that Zhataea had not threatened, harmed, or attacked Ms. Russell. The State also introduced a photograph of Zhataea’s stab wounds and a knife that was found on the man with Ms. Russell while both were at the crime

scene. Given this evidence, we are satisfied beyond a reasonable doubt that if the admission of Ms. Russell's conduct at the McDonald's was an error, the error was harmless.

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