

Circuit Court for Anne Arundel County
Case No. C-02-CR-22-000708

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1878

September Term, 2022

WENDY LEE LANG

v.

STATE OF MARYLAND

Reed,
Albright,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 11, 2026

* 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).

Appellant Wendy Lang had to complete certain documents to become the personal representative (“PR”) of her late fiancé’s estate. In completing those papers, Appellant affirmed under oath that she had not been convicted of certain crimes, one of which is theft. But Appellant had, in fact, been convicted of theft.

The State charged Appellant with perjury and other counts. At trial, the State presented evidence showing Appellant owed restitution for the theft, which the State argued showed Appellant’s motive for falsifying the documents. Appellant also objected to the testimony of the attorney who helped her become the PR on the ground that his testimony was protected under the attorney-client privilege.

A jury convicted Appellant of perjury and related counts. The court sentenced her to three years’ incarceration but suspended the sentence down to one weekend in jail, followed by five years of probation.

In her timely appeal, Appellant presents two questions for our review:

1. Did the court err in allowing evidence that appellant owed restitution in another case as motive evidence under Maryland Rule 5-404(b)?
2. Did the court err in finding the crime-fraud exception to the attorney-client privilege applied and thereby requiring appellant’s attorney to testify?

We answer the first question in the affirmative and hold the trial court erred in admitting evidence that Appellant owed restitution in an unrelated theft case to prove she had a motive to falsify the PR documents. Therefore, we reverse the circuit court and remand for a new trial. On the second issue, we conclude Appellant waived her attorney-client privilege at trial, and thus, we decline to address the merits of her second question.

FACTUAL AND PROCEDURAL BACKGROUND

The Estate Documents

Underlying Appellant's convictions is her now deceased-fiancé, Michael Finck's, will. Mr. Finck's attorney, Frank Lidinsky, prepared the will. Sometime later, Mr. Finck passed away. The will devised Mr. Finck's house and bequeathed half of his personal property to Appellant. The will also made her the estate's personal representative. About one week after Mr. Finck died, Appellant went to Mr. Lidinsky and asked for his assistance in becoming the personal representative of the estate.

Appellant signed several forms in this regard, including a Petition for Administration of Regular Estate. The form included the following two statements, which were made under oath:

- 1) I have not been convicted of fraud, extortion, embezzlement, forgery, perjury, theft or any other serious crime that reflects adversely on my honesty, trustworthiness, or fitness to perform the duties of a personal representative or
- 2) I was convicted of such a crime, namely _____, in [year], but the following good cause exists for me to be appointed as personal representative [lines left blank].

Each statement had a box next to it. Appellant checked the box next to the first statement, indicating she had never been convicted of any of those crimes. But Appellant had, in fact, been convicted of theft.

Appellant signed the forms in Mr. Lidinsky's office. At trial, Mr. Lidinsky testified that Appellant came to his office very upset and crying. According to Mr. Lidinsky, after reviewing the forms with Appellant, she signed them.

Appellant claimed she did not know she made a false statement under oath until the State charged her with perjury. Soon after, she went back to Mr. Lidinsky's office and told him the petition contained an error that needed to be corrected. Mr. Lidinsky then, acting on behalf of Appellant, revised and corrected the petition and drafted an affidavit which stated the following:

I was the fiancé of the decedent. I am to receive the real property under the Last Will and Testament. The balance of the estate are items of personal property that are to be divided between myself and Charles Finck, the decedent's son. Under the Last Will and Testament his other son, Kenneth Finck, is disinherited. Both sons do not like me and I am fearful that if Charles is appointed Successor Personal Representative under Article Seventh of the Last Will and Testament that he will use his power to have me evicted from the home and sell it without giving me the opportunity to have it pass to me in kind. There are no liquid assets in the Estate and I have been advancing the monthly mortgage. Even though I have been convicted of theft, I am the sole beneficiary of the major asset of the estate. I believe for good cause show that I should be able to serve as Personal Representative.

Evidence of Appellant's Restitution Obligation

At trial, the State introduced evidence that Appellant owed restitution on the theft conviction. The circuit court admitted this evidence under Md. Rule 5-404(b). Later, the State used the same evidence to argue that Appellant's obligation to pay restitution was a motive for her to falsify the PR documents. The State introduced a redacted true-test copy of Appellant's theft conviction. This redacted copy notes Appellant's name, that she entered an Alford plea to "THEFT SCHMEE: 10K to UND 100K" and a section entitled "restitution" but provides no details. We shall refer to this document as "the restitution document". Appellant objected to the restitution document's introduction arguing there

was no evidence that connected owing restitution in an unrelated theft case to falsifying the petition and its introduction would be extremely prejudicial.

Mr. Lidinsky’s Testimony

Prior to trial, Mr. Lidinsky moved to quash the State’s subpoena for him, arguing any testimony he could offer was barred under the attorney-client privilege. Appellant also objected, arguing the crime-fraud exception did not apply. The crime-fraud exception holds that communications between an attorney and client are **not** privileged if the advice sought was in furtherance of committing a crime. *Newman v. State*, 384 Md. 285, 310 (2004) (citing *State v. Madden*, 215 W.Va. 705 (2004) (“The crime-fraud exception comes into play when a prospective client seeks the assistance of an attorney in order to commit a crime or perpetrate a fraud on a third party or the court.”) *Newman* held that “a mere statement of the intent to commit a crime or fraud [is insufficient] to trigger the **crime-fraud** exception to the attorney-client privilege.” 384 Md. at 310. In other words, because Appellant argued that the crime-fraud exception did not apply, the attorney-client privilege with Mr. Lidinsky remained intact. The trial judge disagreed and ruled the crime-fraud exception applied, thus compelling Mr. Lidinsky’s testimony. Further, the trial judge denied the motion to quash the subpoena but forbade the State from inquiring about anything other than Mr. Lidinsky witnessing that Appellant signed the PR petition.

Despite this limitation, Appellant’s trial counsel remained concerned Mr. Lidinsky’s answers “would need to be expanded upon or clarified on cross-examination.” As a result, Appellant expressly agreed to waive her attorney-client privilege on the record. Her waiver came after an extensive colloquy with the trial judge, who explained the

ramifications of waiver. At that time, Appellant said she understood the potential consequences and agreed to waive her privilege.

Ultimately, the jury found Appellant guilty of: (1) perjury in an affidavit required by law, (2) perjury in an affidavit to induce a court to pass a claim, and (3) false entry on a public record. The court sentenced her to a three years' incarceration with all but one weekend suspended, followed by five years of unsupervised probation.

This appeal followed. Additional facts will be discussed if necessary.

DISCUSSION

1. Other Crimes Evidence

The Parties' Positions

Appellant posits the State sought to admit the restitution document to establish a motive for Appellant to commit perjury under Rule 5-404(b). Although motive is a recognized exception to the prohibition against other crimes evidence, Appellant argues the restitution document was improperly admitted, because “evidence of indebtedness or poverty is not proper evidence of a motive to commit a crime for financial gain.”

Appellant further argues the information available in the restitution document is factually insufficient to establish motive—it does not indicate the amount of restitution owed, any financial advantage to becoming the personal representative of the estate, that restitution caused Appellant any financial hardship, or that Appellant was desperate for money.

The State's position on appeal differs markedly from their position at trial. Before this Court, the State seems to accept Appellant's position that the restitution document does

not contain enough evidence to establish motive. But at trial, the State moved to admit the restitution document under Maryland Rule 5-404(b). The State specifically argued:

[Appellant’s] efforts to administer the estate of Michael Finck to her benefit, as shown by her submitted Petition for Administration Estate, would demonstrate a motive to obtain funds in order to pay the required restitution in her prior case, and is substantially relevant to the state’s arguments regarding the defendant’s motive in this case.

The State repeatedly referred to [the Document] as “other crimes evidence” which was admissible to establish Appellant’s motive.

At trial, the State argued the evidence that Appellant was ordered to pay restitution was relevant to prove “there things that existed in [Appellant’s] life that could provide a motive to...have falsified the document.” And in closing argument, the State highlighted the significance of Appellant’s restitution arguing it was evidence of her motive to falsify the documents stating,

We’re not required to prove motive in this case but think about it. So, she just forgot that she was found guilty of theft less than two years prior even though she was on probation at the time she’s filling this out and was required to pay restitution?

After the court admitted this evidence, the State used it to prove motive.

Yet on appeal, the State argues the restitution document is not “other crimes evidence” under 5-404(b). Instead, it maintains that the redacted restitution order “revealed nothing particular about the theft.” At oral argument, the State tried to explain this new position. Before this Court, the State essentially argues that because of the restitution document’s heavy redactions, and because Appellant having committed a crime was already a central to the case, the restitution document as admitted provided no new

information. Now, the State argues the restitution document “at worst is something that may have been improperly admitted because it was irrelevant, but it was not improperly admitted because it was a prior bad act.”

Standard of Review

Generally, “the admission of evidence is committed to the considerable and sound discretion of the trial court.” *Merzbacher v. State*, 346 Md. 391, 404 (1997). However, when reviewing a trial court’s decision to admit evidence as “other crimes” evidence, this court extends no deference to a trial court’s decision as to “whether a matter fits within an exception[.]” *Wynn v. State*, 351 Md. 307, 318 (1998). When reviewing the admission of other crimes or bad acts evidence under Maryland Rule 5-404(b), this Court applies a bifurcated standard. Our Supreme Court detailed this approach in *Wynn* stating:

The trial court first determines whether the evidence fits within one or more of the *Ross* exceptions, essentially the exceptions now found in Rule 5–404(b). That is a legal determination and does not involve any exercise of discretion.

If one or more of the exceptions applies, the next step is to decide whether the accused's involvement in the other crimes is established by clear and convincing evidence. The appellate court will review this decision to determine whether the evidence was sufficient to support the trial judge's finding.

If this requirement is met, the trial court proceeds to the final step. The necessity for and probative value of the “other crimes” evidence is to be carefully weighed against any undue prejudice likely to result from its admission. This segment of the analysis implicates the exercise of the trial court's discretion.

351 Md. at 317 (*quoting State v. Faulkner*, 314 Md. 630, 634-35 (1989) (cleaned up)).

Analysis

We agree with both parties. The restitution document was improperly admitted for both reasons: It was prohibited prior bad act evidence, and it was irrelevant. Admitting evidence of a past crime is governed by Maryland Rule 5-404(b), which states:

Evidence of other crimes, wrongs, or acts, including delinquent acts as defined in 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 Supreme Court of Maryland has consistently held that other crimes or bad acts evidence is inadmissible unless it has special relevance that is substantially relevant to some contested issue and is not offered simply to prove criminal character. *See e.g., Wynn*, 351 Md. at 316. It also may be admitted “if the crimes are so linked together in point of time or circumstances that one cannot be fully shown without proving the other.” *Id.* at 317. (citation omitted). Thus, evidence of other crimes evidence is only admissible under limited exceptions.

After applying *Wynn*'s three-step analysis, we conclude the restitution document should not have been admitted. *First*, the evidence must be offered for a purpose listed in Rule 5-404(b), which includes motive. *Wynn*, 351 Md. at 317. Here, the record shows the State intended to introduce the restitution document to prove Appellant had a motive to commit perjury.

Second, the accused's involvement in the other crime must be established by clear and convincing evidence. *Id.* Here, Appellant's prior conviction is established by judicial records and is not contested.

Third, the evidence's probative value must substantially outweigh any undue prejudice likely to result from admitting it. *Id.* Here, the restitution document had minimal probative value, and thus we conclude the document's admission was unduly prejudicial. Consequently, we hold the trial judge erred in admitting the document under Rule 5-404(b).

Further bolstering this conclusion, we note that Maryland courts have repeatedly held that an accused's poverty, or a need for money generally, cannot be used as evidence of motive for theft. In *Vitek v. State*, our Supreme Court held "the fact that the appellant was unemployed and recently had been released from jail was irrelevant to the main issue of guilt or innocence and could not be used to infer motive." 295 Md. 35, 40-41 (1982). The Court ultimately determined that without some "special circumstances," an accused's need for money cannot establish motive. *Id.* at 41.

One such special circumstance could be a "desperate" need for money other than the mere fact of unemployment." *Id.* at 43. Here, the restitution document—which did not include the amount owed—could not establish such a special circumstance. Moreover, there was no evidence of Appellant's income, which would have been required to show how burdensome any restitution would be and thus how likely it would be to motivate a crime.

We hold the admission of the restitution document was fatally prejudicial because as soon as the State argued that Appellant's restitution obligation created a motive, "the

burden shifted to [Appellant] to show that [s]he did not need money and, therefore, had no motive.” *Id.* at 41. We hold Appellant was unfairly prejudiced, because the State forced her to argue against a motive which could not be established by the information contained in the evidence.

The State’s position that the evidence was irrelevant is misplaced. Trial courts have no discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 725 (2011). As we have stated, the restitution document carried a risk of undue prejudice which outweighed any probative value. The trial judge erred by repeatedly allowing the State to argue that irrelevant evidence established a motive. These arguments posed a serious risk of prejudice against Appellant and required them to argue against a factually unsupported position. Even if the evidence was not “other crimes” evidence, admitting it was reversible error.

2. Attorney Client Privilege

The Parties’ Positions

Appellant contends the trial court erred in finding that the crime-fraud exception to the attorney-client privilege applied and thereby requiring Mr. Lidinsky to testify. Appellant argues the State failed to show that she sought Mr. Lidinsky’s advice with the intent to commit a crime. Instead, Appellant argues the State presented vague theories that Appellant sought Mr. Lidinsky’s advice in furtherance of a crime under *Newman*’s holding: “The crime-fraud exception applies solely to communications seeking advice or aid in furtherance of a crime or fraud, and a mere statement of intent to commit a crime is required.” *Newman*, 384 Md. at 310.

Additionally, Appellant argues, based on the holding in *Mayor & City Council of Baltimore v. Smulyan*, 41 Md. App. 202, 219 (1979), that she did not voluntarily waive the attorney-client privilege. In her view, she was compelled to waive the privilege only after the court ruled that the crime-fraud exception applied, compelling Mr. Lidinsky to testify. Appellant asserts that waiver was the only way she could mitigate the damage from the court's adverse ruling and preserve the issue for appeal.

The State contends Appellant waived her attorney-client privilege claim by electing to expand the scope of Mr. Lidinsky's testimony before trial. The State argues that Appellant's pretrial waiver of the privilege renders the issue moot. The State further argues even if Appellant wished to reassert her pre-waiver objection, she was required to make a contemporaneous objection when the evidence was introduced at trial, and her failure to do so means the claim is not preserved. The State also contends the record demonstrates Appellant intended to expand the scope of Mr. Lidinsky's testimony to introduce evidence of events after the signing of the petition, not merely to mitigate damage from the court's ruling. Finally, the State argues Appellant has failed to identify any specific communication improperly admitted, and as the party asserting the privilege, Appellant bears the burden of showing that it applied to specific communications.

Legal Background

Attorney client privilege is “a rule of evidence that prevents the disclosure of confidential communication made by a client to his attorney for the purpose of obtaining legal advice.” *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 414 (1998). Attorney client privilege can be waived either expressly or impliedly:

Although waiver by implication is universally recognized and even though it need not be expressed in writing nor in any particular form, the intent to waive must, however, be expressed either by word or act, or omission to speak out. Once the confidential matter has been disclosed, it is no longer secret and the privilege which might be claimed disappears.

Harrison v. State, 276 Md. 122, 137-38 (1975). Because the client is the one who holds the privilege, “the attorney cannot legally waive the privilege on behalf of the client without the client’s consent.” *Att’y Grievance Comm’n of Maryland v. Powers*, 454 Md. 79, 103 (2017).

As previously mentioned, the Supreme Court of Maryland has recognized that “the crime-fraud exception applies in Maryland to exempt communications seeking advice or aid in furtherance of a crime or fraud, from the protection of the attorney-client privilege.” *Newman*, 384 Md. at 309. In recognizing this exception, the Court stated:

We have never explicitly accepted the existence of a crime-fraud exception to the attorney-client privilege under Maryland law. Nevertheless, we agree with the [United States’] Supreme Court’s assessment that it would be an abuse of the privilege to permit the attorney-client privilege to “extend to communications ‘made for the purpose of getting advice for the commission of a fraud’ or a crime.” *United States v. Zolin*, 491 U.S. 554, 563, 109 S.Ct. 2619, 2626, 105 L.Ed.2d 469, 485 (1989). Thus, we hold that the crime-fraud exception applies in Maryland to exempt communications seeking advice or aid in furtherance of a crime or fraud, from the protection of the attorney-client privilege.

Id.

Analysis

We conclude Appellant waived the issue of attorney-client privilege for appeal. We recognize that Appellant agreed to waive privilege because of an adverse ruling which compelled Mr. Lidinsky to testify. Had Appellant not waived the privilege but, instead

merely, “cross-examine[d]...the witness about the evidence,” or made “other reasonable efforts to show that the evidence, admitted over [her] objection, should nevertheless be discounted or disregarded by the trier of fact,” then this issue would be preserved. But in waiving the attorney-client privilege on the record, and then eliciting testimony from Mr. Lidinsky beyond the scope of the State’s questioning, Appellant solicited “independent reception of the same evidence, from which a waiver may be implied.” *Smulyan*, 41 Md. App. at 219.

The trial court made it clear that the waiver went beyond merely refuting the limited testimony surrounding the circumstances of Appellant signing the PR petition. The court explained to Appellant that her trial counsel “believes it’s in your best interest for the privilege to be waived by you so that Mr. Lidinsky can testify more completely and more thoroughly.” Appellant’s litigation strategy was not merely to challenge evidence admitted over objection, but to bring in additional evidence from Mr. Lindinsky to support her case. As a result, Appellant voluntarily waived the attorney-client privilege. Consequently, we need not consider whether the crime-fraud exception was properly applied in this case.

CONCLUSION

Based on the foregoing, we reverse the circuit court’s admission of evidence related to Appellant’s restitution obligation as it was irrelevant and unduly prejudicial. We remand this case for a new trial.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED AND REMANDED FOR NEW
TRIAL. ANNE ARUNDEL COUNTY TO
PAY THE COSTS.**