Circuit Court for Baltimore County
Case No. 03-K-17-002281

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2022

September Term, 2018

DOMINICK DANIEL HURSEY

v.

STATE OF MARYLAND

Arthur,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 9, 2019

Appellant, Dominick Daniel Hursey ("Hursey"), was charged in the Circuit Court for Baltimore County with (1) two counts of first-degree murder; (2) two counts of first-degree assault; (3) two counts of the use of a firearm in a violent crime; and, (4) carrying and transporting a handgun on his person. A jury found Hursey guilty of two counts each of first-degree murder and use of a firearm in the commission of a crime of violence. He was sentenced to two consecutive life sentences, without the possibility of parole. He appealed timely.

On appeal, Hursey poses the following questions for our consideration:

1. Did the circuit court err in admitting evidence that he pled guilty to assaulting one of the victims he was on trial for murdering?
2. Did the trial court err in admitting evidence that he purchased a handgun of the same make as the murder weapon eleven years before the murders occurred?

For reasons to be explained, we shall affirm the judgment of the circuit court.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. A Complicated Domestic Relationship Backdrop

Hursey and one of the victims, his ex-wife, Chinika Hursey ("Chinika"[1]), had a complicated relationship after their marriage in 2006. The couple separated and divorced ultimately in 2010 after their second son was born. In 2011, Chinika gave birth to a daughter named Nakia, whose father was not Hursey. The relationship between Chinika and Nakia's father deteriorated also. In November or December of

[1] Meaning no disrespect, we refer to Chinika Hursey by her first name throughout this opinion in order to avoid any confusion because of the surname she and Dominick Hursey shared.

2011, Chinika "reconciled" with Hursey in a domestic relationship, and the two moved in together. Hursey served as Nakia's father figure after rekindling his relationship with Chinika. In October 2016, Hursey moved out of the shared home because he was no longer providing support for the family. The three children remained with Chinika.

After Hursey moved-out, Chinika began dating the second victim, Steven Campbell ("Campbell"). Campbell moved into the home she had shared with Hursey. About the same time, Hursey began dating Brenda Carr ("Carr"), and moved into her home, which was a seven-minute drive away from Chinika's home. Although Hursey was no longer living daily with his children, he had a custody arrangement that allowed him to have his two biological sons on weekends. Chinika would allow frequently Nakia to go with her half-brothers on their scheduled weekends with Hursey, even though Nakia was not mentioned in the custody arrangement. When the children stayed with Hursey, Jenelle Hatt ("Hatt"), a friend who lived nearby, would take Hursey's children to school on Mondays so that Hursey and Carr could get to work on time.

Chinika and Hursey were able to maintain an amicable relationship and follow the custody arrangement (formal and informal) until February 2017. On 25 February 2017, there was an incident between Chinika and Hursey at a local CarMax facility regarding money owed on a car. The incident resulted in them seeking assault charges against each other. Hursey was scheduled to be tried for his alleged second-degree assault on Chinika in April 2017. Chinika requested additionally an *ex parte*

protective order against him. On 29 March 2017, Hursey learned that Chinika obtained successfully a one-year duration protective order. Because of this, Hursey told Carr that he was now "done [with Chinika] forever."

On 2 April 2017, Chinika and Campbell hosted a party at their house with approximately 20-30 guests. Hursey was at his home with his two sons. That night, Carr went to bed upstairs by herself, while Hursey slept in the living room with his sons.

Carr's phone records, introduced into evidence at trial, reflected that between 3:14 a.m. and 4:15 a.m. on 3 April 2017, she sent numerous text messages to Hursey. These messages, which were deleted subsequently by Carr, included: (1) "why, babes!!!"; (2) "PLOTTING EVIL DOES NOT REPAY EVIL. BABES, PLEASE DON'T DO ANYTHING."[2]; (3) "I prayed that you've prayed before you went through the door, that the action/reaction thought of was a blessing from God. Baby, please don't give into wickedness."; and (4) "Babe, please come back home." Hursey did not respond to any of Carr's messages, but his phone records indicated that he did place a call at 4:55 a.m. through WhatsApp[3] to an individual named "Jojo." Hursey did not make or receive another call until later that morning, as we shall discuss later in the opinion.

[2] "Plotting evil does not repay evil" is a portion of a bible verse from the New Testament, Romans 12:17.

[3] WhatsApp is a free app that uses wifi to make calls; thus, the location of the individual making the call cannot be traced because this type of call does not involve the use of a cell tower.

B. The Murder

During the early morning hours of Monday, 3 April 2017, Nakia, who was four-years-old at the time, awoke after hearing "loud bangs." The noise frightened her, so she went downstairs to find her older brother, Aubrey. It was not an uncommon occurrence for Nakia to come into Aubrey's room in the middle of the night. Both returned to sleep in his room. At 6:45 a.m., Aubrey left for school, without going upstairs, and left Nakia alone in his room. When Nakia awoke again, she walked upstairs to the master bedroom and discovered the dead bodies of Chinika and Campbell. After discovering the bodies, Nakia went outdoors.

Hursey, rather than following the usual transportation arrangement to get his sons to school, was able to take them to school on April 3rd because his manager allowed him to come in a "little later" to work. Hursey attempted to contact Hatt to advise her that there was no need for her to take the kids to school that morning, but she was in route already when he called her cellphone.

As Hursey drove his sons to school, which required him to drive past Chinika's home, he noticed Nakia standing outside without her shoes on. Hursey pulled the vehicle over to speak to her. Nakia told Hursey that Chinika and Campbell were dead. Hursey entered Chinika's home, noticed the bodies upstairs, and proceeded to check the other rooms. According to Hursey, he thought Aubrey committed the murders and sought to protect him by tampering with the crime scene. Specifically, Hursey picked up shell casings, rounds, and a latex glove he found on the floor. Hursey put these items in a bag and shoved it into his pants pocket.

While driving to work, Bryant Jordan ("Jordan"), a childhood friend of Hursey's, noticed Hursey's vehicle in front of Chinika's house and decided to call him because he knew of the protective order. When Hursey did not answer his cellphone, Jordan decided to turn around to make sure nothing was amiss. Upon his arrival, Jordan spoke with Hursey's sons, who were sitting outside in Hursey's vehicle. Then, as he opened the door to Nakia's home, he saw Hursey, who looked to him to be in shock, at the top of the steps gathering clothes for Nakia. Hursey informed Jordan that Chinika and Campbell were dead. Jordan asked if Hursey had called 9-1-1, but Hursey had not, claiming he left his cellphone at home. While Jordan called 9-1-1, Hursey walked down the street, where he concealed the bag of materials gathered from the crime scene under a "green drain." Hursey then returned to Chinika's home.

C. The Police Investigation

Police officers arrived at the scene and found the bodies of Chinika and Campbell in the master bedroom, both of which exhibited multiple gunshot wounds. The responding officers observed an open window and a window screen on top of a couch in the downstairs living room. In addition, a wicker lawn chair, which matched one on the front porch, was discovered under the open window, along with a black glove. Officers also spoke to a nearby resident who claimed to have heard noises around 4 a.m.

After securing the crime scene, a Forensic Service Technician was called to examine the scene, take photographs, and collect evidence. The Technician noticed

the house was equipped with security cameras. Recovered camera footage revealed a masked man walking in the living room area just before 4 a.m. on 3 April 2017 and running out of the house one minute and ten seconds later. The Technician collected numerous shell casings, some of which read "Federal 40 Smith & Wesson," from the master bedroom. No other room appeared to be ransacked other than the master bedroom and its en suite bathroom. The Technician observed that the window screen in the living room had been cut and damaged at the top.

The police brought Hursey to the police station to obtain his statement. While at the station, officers noticed that he did not have any blood or other detritus on his clothing. The police investigation of Hursey revealed, among other things, that: (1) Hursey purchased a .40 caliber handgun on 26 October 2006; and, (2) Hursey had gone to a firing range in Timonium on 2 October 2011.[4] Explaining these events, Hursey claimed that he purchased the gun for protection at his house. Police did not speak to or investigate any of the 20-30 individuals who attended the party at Chinika's house the night before the murders; only Hursey was investigated and arrested.

Detectives searched also Hursey's residence. During the search, detectives found a shooting target with bullet holes in it. Neither Hursey's cell phone, that he claimed to have left at home, nor any items with blood or detritus on them were uncovered during the search. Detectives obtained a court order to "do a locate" on

[4] Hursey did not state, nor did the investigation uncover, what make and model of firearm he used at the firing range.

Hursey's phone. It was discovered that the phone was located inside of a bag in Hatt's vehicle. Inside Hatt's vehicle also was a thumb drive with Hursey's resume, a K&G Men's Warehouse member card (that had not been used since 2010), and .40 caliber ammunition. Hursey never told police that he went to Hatt's house on the morning of the murders, or that he called her the night before (and morning of) the murders. Hursey's explanation for these omissions was that he "wasn't thinking about it at the time." After discovering that Hursey had gone to Hatt's residence, the police calculated that it would have taken Hursey a total of 51 minutes to drive to Chinika's home to commit the crime, then to Hatt's residence to hide the evidence in her car, and then return home.

On 4 April 2017, the Technician collected evidence from and took photographs of Hatt's vehicle. Inside the vehicle the Technician recovered (1) a latex glove in the center console; and, (2) an Adidas bag containing a 12-gauge shotgun, multiple boxes of ammunition, and Smith & Wesson-branded ammunition that matched the shell casings recovered at the scene. No handgun was found.

On 6 April 2017, Hursey made a call from the jail to an unknown individual who he asked to retrieve the bag that Hursey concealed on the day of the murders under the "green drain" down the street from Chinika's house. Detectives, following the instructions Hursey told the unknown individual in the mentioned jail house call, found the bag first. The casings inside the bag were stamped "Federal 40SW."[5]

[5] "SW" stands for "Smith & Wesson."

A Firearm and Tool Mark expert examined the bullets and casings found at Chinika's home, the results of an autopsy of the victims, and the contents of the bag Hursey hid under the "green drain." The expert was able to discern that the casings and bullets all were fired from the same firearm. Further, he opined that this type of ammunition could have been fired from the .40 caliber handgun that Hursey purchased in 2006.

A Technician examined the black glove found at the scene of the crime and the latex glove that was found in the hidden bag under the "green drain." Nothing found in the examination, however, linked directly Hursey to this evidence. The Technician also found two latent palm prints on Chinika's backdoor. The Technician concluded that one of the prints matched Hursey's right palm, but could not determine when this print was left.

Prior to trial, Hursey pled guilty to the second-degree assault charge from the CarMax incident that Chinika caused to be filed against him. The State sought to introduce evidence at the murder trial regarding this plea and conviction. It moved (successfully) *in limine* to introduce evidence that Hursey had been *charged* with second-degree assault from the incident at CarMax. Because Hursey's trial for the assault had been set to occur the same month as the murders of Chinika and Campbell, the trial judge deemed the earlier assault charge relevant regarding a possible motive for the murders.

D. The Trial

At trial, Hursey testified in his own defense. Of particular relevance to the

questions pressed in this appeal, he claimed that he did not assault Chinika at the CarMax, which contradicted directly the guilty plea entered in that matter. The State countered that Hursey pled guilty to the assault. Hursey explained that he only pled guilty because he was told that he would receive probation in exchange for his plea. During this line of cross-examination by the State, Defense Counsel objected and moved for mistrial, arguing that: (1) the plea in the assault case and/or the assault conviction was not an impeachable offense; (2) the plea was not admissible evidence; and, (3) prior to trial, the State agreed to only introduce evidence that Hursey was charged with assault. Defense counsel's objections were overruled.

The State produced at trial evidence showing that Hursey purchased a .40 caliber semiautomatic handgun in 2006. Defense Counsel objected to the admission of this evidence on the grounds that it was unduly prejudicial because the gun was believed by Hursey to be "stolen or lost." The objection was overruled.

As mentioned earlier in this opinion, the jury found Hursey guilty of two counts of first-degree murder and two counts of use of a firearm in the commission of a crime of violence. He was sentenced to two life sentences, without the possibility of parole.

II. DISCUSSION

We are asked in this case to consider two questions: first, whether the trial court erred in admitting testimony and evidence of Hursey's guilty plea in the earlier assault charge; and, second, whether the evidence of Hursey purchasing a .40 caliber handgun eleven years prior to the murders should have been admitted. We find, on

this record, no reversible error as to either of those rulings and, accordingly, shall affirm.

A. Standards Of Review

When a trial judge's reasoning for admitting or excluding evidence involves a purely legal question, we review the trial court's ruling without deference. *J.L. Matthews, Inc. v. Md.-Nat'l Capital Park & Planning Comm'n*, 368 Md. 71, 92, 792 A.2d 288, 300 (2002); *see also Schisler v. State*, 394 Md. 519, 535, 907 A.2d 175, 184 (2006) (finding that errors of law and purely legal questions are reviewed without deference).

If the evidence is found to be relevant, then we assess the trial judge's "discretionary weighing" when determining whether the evidence should not have been admitted for other reasons. *Parker v. State*, 408 Md. 428, 437, 970 A.2d 320, 325 (2009) (citation omitted). Trial judges have a "wide discretion" weighing the relevancy of evidence, but they do not possess the discretion to admit irrelevant evidence. *State v. Robertson*, 463 Md. 342, 353, 205 A.3d 995, 1001 (2019) (internal quotations omitted). Relevant evidence is admissible generally, but can be rejected nonetheless if the "probative value is outweighed by the danger of *unfair* prejudice." *State v. Simms*, 420 Md. 705, 724, 25 A.3d 144, 155 (2011) (emphasis added); *see* also Md. Rule 5-402. Generally, we "defer to the trial court's rulings on the admissibility of evidence . . . and we will not disturb such rulings in the absence of an abuse of discretion." *Newman v. State*, 236 Md. App. 533, 556, 182 A.3d 281, 294 (2018); *see also Oesby v. State*, 142 Md. App. 144, 166, 788 A.2d 662, 674 (2002)

("Reversal should be reserved for those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly and outrageously so.").

B. The Earlier Guilty Plea To Second-Degree Assault

Hursey argues that the trial court erred in admitting testimony and evidence that he pled guilty to assaulting Chinika on 25 February 2017 at the CarMax facility. He contends on appeal that the guilty plea is irrelevant in the present case, inadmissible as a prior bad act, and was unduly prejudicial. The State maintains that Hursey failed to preserve these arguments, and even if preserved, the court permitted properly the mention of the guilty plea as impeachment evidence because Hursey made inconsistent statements while testifying about the outcome and effect of that matter.

It strikes us as a close call whether Hursey preserved his appellate arguments for our consideration. Preserving an argument for appeal requires a party in the trial court to object timely, and, if asked, state the grounds for the objection. *Anderson v. Litzenberg*, 115 Md. App. 549, 568, 694 A.2d 150, 159 (1997). Any grounds not stated are presumed waived. *Id.* Here, Defense Counsel objected generally at first, when the State sought to introduce evidence of the plea. When asked by the court for the grounds of his objection, Defense Counsel stated:

> [DEFENSE]: The basis of the objection is is [sic] that the pleading of the assault or the assault conviction is one, not an impeachable crime. Two, it was agreed that the assault, that yes, there was [an] appending case, but a conviction of the assault or his choosing to plead guilty to the assault which somebody can do for a multitude of reasons and not

> admit to the respective crime would not be admissible. It would not be entered into evidence.

The objection as framed is very broad indeed; however, we understand it to preserve the arguments that are presented on appeal. We think that the trial judge was put on notice adequately of Hursey's claims in a scope and vein consistent with his appellate arguments. We find that his arguments here were preserved and are before us properly for consideration.

i. Hursey's Guilty Plea Was Relevant

Pursuant to Md. Rule 5-401, relevant evidence is "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." Evidence that does not meet this standard is inadmissible. Md. Rule 5-402.

Hursey first claims that his guilty plea was irrelevant to the case at hand because the plea was entered *after* the murders were committed. He claims additionally that the State agreed pre-trial that it would not introduce any information about the assault. The State contends, however, that the plea admission became relevant after Hursey made an inconsistent statement about the guilty plea, at which point the plea could be used to attack his credibility:

> [STATE]: You testified getting angry doesn't work for you?
>
> [HURSEY]: No. It doesn't.
>
> [STATE]: That is not [sic] [what] went down on February 25th at the CarMax, is it?
>
> [HURSEY]: Ah, no.

[DEFENSE]: Objection.

[THE COURT]: Overruled. You may answer the question.

[HURSEY]: No ma'am. It, it didn't work out that way. I ah, caught myself being a nice guy again. As many times I've told her no, I don't want to go nowhere because you're upside down (inaudible) on a car that costs nineteen thousand that you owe on and the dealerships and everyone else said that the car is worth sixteen, which puts you at $3,000.00 negative. And I kept telling her no. But you know, she said, well, you always say no. you never go. So, I said, okay, you know what, you're right. I do always say no. I'm going to go. So, I went. As a good faith, I went with her. I went to the dealership. She showed up dressed very, very provocative.

[STATE]: *Mr. Hursey, are you saying you didn't assault her on that day?*

[HURSEY]: *No ma'am. I didn't.*

[STATE]: *You did not?*

[HURSEY]: *No ma'am. I didn't.*

[STATE]: Mr. Hursey?

[HURSEY]: And I said that in court too ma'am.

[THE COURT]: Wait a second. Again, do not talk across each other. Give a chance, a chance to answer the question and you'll ask the next question.

[HURSEY]: Yes. Yes.

[STATE]: Mr. Hursey, you pled guilty to that assault, isn't that correct?

[DEFENSE]: Objection Your Honor.

[THE COURT]: (BENCH CONFERENCE BEGINS)

* * *

[THE COURT]: Your objections [are] overruled. Your Motion for

> Mistrial is denied. Let's move along. . . . Ask your question again.
>
> [STATE]: You pled guilty to a second-degree assault of Chinika from that incident at the CarMax, correct?
>
> [DEFENSE]: Objection.
>
> [THE COURT]: Overruled. You may answer the question.
>
> [HURSEY]: Yes ma'am I, I pled guilty because they told me they was going to give me probation just for a year and it wouldn't be nothing. And that was while I was here, arrested for this. And I figured I didn't do this. So, once I get out with [sic] I'll deal with that when I get out.

(Emphasis added).

We agree with the State that the references to Hursey's guilty plea meet the standard in Md. Rule 5-401 because he made an arguably inconsistent statement about its meaning while testifying, which goes to his credibility as a witness. When Hursey assumed the role of a witness, he "put his character in evidence," and allowed the State to attack his credibility, consistent with Md. Rules 5-616[6] and 5-613.[7] *Braxton*

[6] The relevant sections of Md. Rule 5-616 provide:

> (a) Impeachment by Inquiry of the Witness. The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:
> (1) Proving under Rule 5-613 that the witness has made statements that are inconsistent with the witness's present testimony . . .
> (b) Extrinsic Impeaching Evidence.
> (1) Extrinsic evidence of prior inconsistent statements may be admitted as provided in Rule 5-613(b).

[7] Md. Rule 5-613 states:

> (a) Examining Witness Concerning Prior Statement. A party examining a witness about a prior written or oral statement made by the witness need not show it to the witness or disclose its contents at that time, provided that before the end of the

v. State, 11 Md. App. 435, 438-39, 274 A.2d 647, 649 (1971); *see also Devincentz v. State*, 460 Md. 518, 551, 191 A.3d 373, 392 (2018) (finding that the truthfulness of a witness was "unquestionably relevant" for the jury when determining whether the testimony was credible). As such, we find that the plea admission was relevant evidence used to attack Hursey's credibility when he made inconsistent statements in the trial for the murders.

ii. Hursey's Prior Bad Act Used For Impeachment Purposes

Md. Rule 5-404(b) prevents a party from admitting prior bad acts of the other party into evidence when offered to "confuse jurors, predispose them to a belief in the defendant's guilt, or prejudice their minds against the defendant." *Terry v. State*, 332 Md. 329, 334, 631 A.2d 424, 426 (1993). Evidence of prior bad acts, however, may be admissible under Md. Rule 5-616, which allows the impeachment of a witness's credibility, when it is used in "[p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely;" or by

> examination (1) the statement, if written, is disclosed to the witness and the parties, or if the statement is oral, the contents of the statement and the circumstances under which it was made, including the persons to whom it was made, are disclosed to the witness and (2) the witness is given an opportunity to explain or deny it.
> (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Unless the interests of justice otherwise require, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under this Rule (1) until the requirements of section (a) have been met and the witness has failed to admit having made the statement and (2) unless the statement concerns a non-collateral matter.

"[p]roving the character of the witness for untruthfulness by (i) establishing prior bad acts as permitted under Rule 5–608(b) or (ii) establishing prior convictions as permitted under Rule 5–609." Md. Rule 5-616.

Hursey claims that evidence of prior crimes or bad acts are inadmissible generally under Md. Rule 5-404(b).[8] The State argues that it did not use Hursey's guilty plea to show his criminal character; rather, it used it to impeach his credibility as a witness.

We agree that the State's impeachment use of Hursey's guilty plea was permissible under Md. Rule 5-616. The State mentioned Hursey's plea admission to attack his *credibility* as a witness, as distinguished from using the evidence to "prove the character of a person in order to show action in the conformity therewith." Md. Rule 5-404; *see State v. Cox*, 298 Md. 173, 468 A.2d 319 (1983) (finding that a witness may be cross-examined about prior bad acts that are relevant to assessing his credibility); *see also Ellsworth v. Baltimore Police Dep't*, 438 Md. 69, 88, 89 A.3d 1183, 1194 (2014) (holding that crimes or bad acts can be admitted into evidence when they relate rationally to the witness' character for untruthfulness). The record

[8] The relevant section of Md. Rule 5-404 provides:

> (b) Evidence of other crimes, wrongs, or other acts . . . 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.

reveals that the State made no attempt to invite the jury to draw the syllogism (or other impermissible inferences) that Hursey committed violence against Chinika before her murder and therefore had a propensity to commit violence, so he must have committed the murders. As such, we find no reversible error with the admission in evidence of Hursey's earlier assault conviction involving Chinika.

iii. Prejudiced Unfairly By The Admission?

The plea admission, although relevant, may still be inadmissible if it is determined to be unfairly prejudicial. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705, 98 A.3d 444, 453 (2014); *see also Newman v. State*, 236 Md. App. 533, 549, 182 A.3d 281, 290 (2018) (internal quotations omitted) (defining unfair as "only the incremental tendency of the evidence to prove that the defendant was a bad man."); *State v. Heath*, No. 36, Sept. Term, 2018, (filed 28 June 2019) (slip op. at 18-19) (finding that the probative value of evidence will be outweighed by its potential prejudice if the evidence has such an "adverse effect" that would likely confuse the jury).

Hursey contends that the plea admission should have been excluded by the trial court under Md. Rule 5-403 because the potential unfair prejudice far outweighed its probative value. Hursey fails, however, to articulate precisely how the plea admission used to impeach him on the stand was *unfairly* prejudicial. Rather, Hursey limited his argument in this regard stating: "[i]t is hard to overstate the prejudicial impact on

a jury of evidence that [he] pled guilty to assaulting one of the murder victims shortly before her death." The State contends that Hursey was not prejudiced unfairly because his impeachment was strongly probative of his "truthiness."[9] Further, the State maintains that the jury would be unable to make an informed assessment regarding Hursey's testimony if they could not evaluate it in the context of his prior inconsistent statement.

We agree with the State's position that the probative value of Hursey's impeachment was not outweighed substantially by unfair prejudice. Rather, the information would assist the jury in making an informed decision as to his credibility. *See Walker v. State*, 373 Md. 360, 391-92, 818 A.2d 1078, 1096 (2003) (ruling that the probative value of a witness' impeachment testimony at trial was significant since it revealed that the defendant was untruthful, and did not outweigh the prejudicial effect it had on the defendant's prior statement); *see also King v. State*, 407 Md. 682, 692, 967 A.2d 790, 796 (2009) (holding that a trial court abused its discretion when it did not allow a defendant to introduce evidence of a witness' prior drug conviction after a defendant believed the witness had lied on the stand). Although Hursey's plea admission was prejudicial indisputably, "all competent and trustworthy evidence offered against a defendant is prejudicial. If it were not, there would be no purpose in offering it." *Newman*, 236 Md. App. at 549, 182 A.3d at 290. Hence, it is essential that the evidence exhibit *unfair* prejudice that would outweigh the probative value in

[9] It is conceded generally that this word was initiated in popular lore by Steven Colbert during his TV show *The Colbert Report* (first show) (2005).

order to be excluded. Here, Hursey has not convinced us that his plea admission met the threshold of demonstrating how its probative value was outweighed by unfair prejudice. As such, the trial judge did not abuse his discretion in admitting Hursey's plea as impeachment evidence.

C. Evidence Regarding The Handgun Purchased By Hursey

Hursey's second argument is that the trial court erred in admitting evidence that he purchased a .40 caliber handgun eleven years prior to the murders. He contends in this Court that the evidence was too remote in time to have probative value and was highly prejudicial. The State responds, and we agree, that Hursey failed to preserve this ground at trial. This bars Hursey from raising this issue on direct appeal; however, assuming *arguendo* that the objections were properly preserved, we would find Hursey's claim to be meritless.

i. Hursey Did Not Preserve This Argument For Appeal

It is well settled Maryland law that "[i]f counsel provides the trial judge with specific grounds for an objection, the litigant may raise on appeal only those grounds actually presented to the trial judge. All other grounds for the objection, including those appearing for the first time in a party's appellate brief, are deemed waived." *Anderson*, 115 Md. App. at 569, 694 A.2d at 160.

In the instant case, the State admitted a "Pennsylvania State Police Application/Record of Sale" to show that Hursey had purchased a .40 caliber semiautomatic handgun, a type of gun that could have been used in the murders. Hursey objected on the grounds that the evidence was unduly prejudicial given that

Hursey did not know the whereabouts of the handgun after his separation from Chinika when he moved from their home in 2010:

> [DEFENSE]: I'm objecting to that coming into evidence . . . [Hursey believes] that it was stolen or lost . . . [and he] did not move it to [his current residence], so we don't know if it remained at [his former residence] or was elsewhere . . . [Therefore,] it's highly prejudicial and lacks any probative value.

We conclude that this objection did not preserve the appellate argument he makes now. The objection Hursey stated at trial was centered on the potential unfair prejudice stemming from Hursey not knowing the location of his handgun at the time of the murders. Hursey never stated anywhere in his objection about the "remoteness" in time of the handgun purchase (his argument before this Court). Therefore, because this ground was not stated in his objection at trial, it was not preserved for our consideration. *See Brecker v. State*, 304 Md. 36, 40, 497 A.2d 479, 481 (1985) (holding that an appellant who objected properly to the *amount* of restitution because it was not included in the presentence report, waived the ability to challenge on appeal the court's inquiry into appellant's ability to pay before ordering the restitution).

ii. Hursey Was Not Unfairly Prejudiced By The Evidence

Even if Hursey's trial objection was viewed as adequate to the purpose of his ability to challenge on appeal the remoteness in time of the alleged handgun sale, his argument is without merit. Chronological remoteness goes to the weight, not the admissibility, of proffered evidence. *Reed v. State*, 68 Md. App. 320, 330, 511 A.2d 567, 572 (1986). Providing evidence that Hursey purchased the same type of handgun that was used to commit the murders is relevant and probative. *See Hayes v. State*, 3

Md. App. 4, 8-9, 237 A.2d 531, 533-34 (1968) (holding that it is "always" relevant to show that the defendant possessed the means to commit the crime).

With respect to Hursey's argument regarding prejudice, he states that the evidence is prejudicial because of its "remoteness." Hursey attempts to liken his position to that in *Dobson v. State*, 24 Md. App. 644, 335 A.2d 124 (1975), *Anderson v. State*, 220 Md. App. 509, 104 A.3d 937 (2014), and *Gooch v. State*, 34 Md. App. 331, 367 A.2d 90 (1976). The above cases, however, are inapposite factually with the present case. The evidence as to the handguns in those cases either proved conclusively they were not the weapons used in the crimes or it was never established whether the handguns shared similar characteristics or qualities to the ones used in the crimes. Moreover, the handguns in those cases were introduced for impeachment purposes or through a rebuttal witness. Contrary to these cases, the record here shows that Hursey purchased the same type of gun used in the murders. Such is not the type of evidence that would trigger an emotional response such that the logic of the jurors would be supervened by prejudice or sympathy. *Odum v. State*, 412 Md. 593, 615, 989 A.2d 232, 245 (2010). Therefore, Hursey has not persuaded us that he was prejudiced unfairly by this evidence. *See Reed*, 68 Md. App. at 330, 511 A.2d at 572 (finding that a witness who testified that she had seen the appellant a year and a half earlier with a gun was more probative than prejudicial because it showed the appellant possessed the type of weapon used on the present victim).

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