Circuit Court for Wicomico County
Case No. 22-K-16-0669

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2195

September Term, 2017

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DAQUAN CARTIER DICKERSON

v.

STATE OF MARYLAND

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Fader, C.J.,
Beachley,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Fader, C.J.

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Filed: January 25, 2019

A jury in the Circuit Court for Wicomico County convicted Daquan Dickerson, the appellant, of a variety of offenses arising out of the murder of Keonte Gaskins. Those convictions include second-degree murder, various assault and firearms offenses, and, most relevant to this appeal, attempted armed robbery, attempted robbery, conspiracy to commit armed robbery, and conspiracy to commit robbery. The court sentenced Mr. Dickerson to a total of 100 years' imprisonment.[1] Mr. Dickerson now argues: (1) that the evidence at trial was insufficient to convict him of the four robbery counts because the State failed to show that he intended to rob the victim or that he made an agreement to do so; and (2) that the trial court erred in admitting testimony that Mr. Dickerson had interacted with someone regarding drugs. We conclude that the evidence is sufficient and that the court did not err. Accordingly, we affirm.

## BACKGROUND

In the afternoon hours of May 10, 2016, an individual later identified as "Little Boogie" robbed Mr. Dickerson at gunpoint outside of a residential home in Wicomico County. At the time of the robbery, Mr. Dickerson was in a car with his cousin, Gerald Savage. Following the robbery, Mr. Savage and Mr. Dickerson picked up a friend, Josh Perry. The three men then drove around for some time, making multiple stops. At one stop, Mr. Dickerson recovered some money. At another, Mr. Perry and Mr. Dickerson, both of whom were armed, exited the vehicle and walked into the stairwell of an apartment complex, where they encountered Keonte Gaskins, a close friend of Little Boogie. Mr.

[1] Of the 100 years, twenty was attributable to the attempted armed robbery count. The remainder of the sentence was attributable to the non-robbery counts.

Dickerson then fatally shot Mr. Gaskins multiple times. Mr. Dickerson and Mr. Perry then returned to the vehicle and Mr. Savage drove them all away.

At trial, Mr. Savage and Mr. Perry both testified as witnesses for the State. As the issues Mr. Dickerson now raises turn on their testimony, we review the relevant portions in some detail.

***Testimony of Gerald Savage***

Mr. Savage testified that on the day of the shooting, he picked up Mr. Dickerson and they drove together to Price Check, a local store, where he parked and waited "on somebody to call." After Mr. Dickerson received a call from a woman Mr. Savage did not know, Mr. Savage drove the car to a nearby location where Mr. Dickerson got out and walked around to the back of a house.

Approximately two minutes later, Mr. Dickerson returned to the vehicle. Shortly thereafter, a woman approached and threw a clear bag containing a substance that was unknown to Mr. Savage through an open window and onto the passenger's side floor of the car. As the woman walked away, an unidentified man armed with an "M16 style rifle" approached the car from the rear, put his rifle through the window, and robbed Mr. Dickerson of the clear plastic bag (and its contents), his cellular phone, some money, and the gold chain off Mr. Dickerson's neck. Mr. Savage then drove away.

Mr. Savage testified that Mr. Dickerson was "angry" and "frustrated" and stated that "he needed a gun" and that "they going to die." Mr. Dickerson then directed Mr. Savage to make several different stops. At one stop, they picked up Mr. Perry "[b]ecause he had

a weapon." Messrs. Savage and Dickerson also discussed getting a gun for Mr. Dickerson to use "[f]or protection." Mr. Savage believed that Mr. Dickerson obtained such a firearm from an unidentified individual at one of their stops.

At another stop, Mr. Dickerson got out of the vehicle and met a different unidentified individual. Mr. Savage initially testified that the individual gave Mr. Dickerson "back some of his money," but later clarified that he was not sure whether it was the same money that had been taken or other money. In any event, Mr. Dickerson was "upset" that he had not also recovered his other possessions and, with "[b]uilding frustration," asked the unidentified individual about "my phone, my other stuff, my wallet."

The three men continued driving at Mr. Dickerson's direction and returned to the area where the robbery had occurred. Mr. Savage testified that the mood in the car was "tense" and that Mr. Dickerson was "[s]till frustrated." Although there was no "talk in the car" about what they "were up to," Mr. Savage inferred that they were trying "to find the person who robbed us." Eventually, still at Mr. Dickerson's direction, Mr. Savage drove to a nearby apartment complex, backed into a spot near a dumpster, and left the vehicle running. Mr. Perry and Mr. Dickerson, both dressed in black hoodies with hoods pulled up, then got out of the car and walked straight into the complex with their hands in the pockets of their hoodies. A short time later, Mr. Savage heard "[g]unshots" and saw Messrs. Dickerson and Perry "running" toward him. When the two men got back into the car, Mr. Savage drove away. As he was pulling out, Mr. Dickerson stated, "I got that n****r." When Mr. Savage asked who, Mr. Dickerson responded, "Keno."

The three men went somewhere "[t]o get rid of the weapons" and then traveled to Mr. Dickerson's girlfriend's house, where they spent the night. At some point during their stay, Mr. Savage gathered the clothes that Mr. Dickerson and Mr. Perry were wearing and "took them to another location and dumped them off." In the morning, the three men all went their separate ways.

***Testimony of Josh Perry***

Mr. Perry testified that on the day of the shooting he received a call from Mr. Dickerson, who stated that some "bitch ass n****rs just robbed him." Mr. Dickerson also told Mr. Perry that Little Boogie had robbed him and that a woman he called "Pootney" had "set him up." Mr. Dickerson then asked Mr. Perry to "load the guns up" and meet him.

A short time later, Messrs. Savage and Dickerson picked up Mr. Perry, who was armed with a .38 caliber handgun. When Mr. Perry entered the vehicle, Mr. Dickerson asked him if his gun was loaded. The three men then traveled to another location, where Mr. Dickerson exited the vehicle and returned with "a Glock" with "a laser on it." At yet another stop, Mr. Dickerson had a conversation with an unidentified individual from whom he recovered "his phone and some money." Mr. Dickerson was not "happy with that" because "it wasn't all the money."

The three men then drove back to the area where the robbery occurred "to find out who robbed [Mr. Dickerson]." At the time, Mr. Dickerson was "[s]till mad" and stated, "this bitch ass n****r is going to die." At some point, Mr. Dickerson directed Mr. Savage to drive to "Waterside," an apartment complex in Salisbury. Mr. Perry "guess[ed]" that

they went to Waterside because that was where "Little Boogie and his people hang out at." After Mr. Savage parked, Mr. Dickerson told Mr. Perry to "get out," which he did. Mr. Perry believed that he and Mr. Dickerson were going to find the person who robbed Mr. Dickerson and "[r]ob him, rob it back."

Messrs. Perry and Dickerson walked up to the exterior stairwell of the apartment complex, where they encountered an individual later identified as Mr. Gaskins. After Mr. Dickerson identified Mr. Gaskins as "one of them bitch ass n****rs," Mr. Perry fired a shot in the air to scare him. Around the same time, Mr. Dickerson started shooting at Mr. Gaskins, firing approximately ten rounds in quick succession. Messrs. Dickerson and Perry then returned to Mr. Savage's car and the three men drove away. They then disposed of their weapons and traveled to Mr. Dickerson's girlfriend's house, where they stayed the night. Mr. Perry originally thought that the victim was Little Boogie, but he later learned that his name was Keno.

## DISCUSSION

### I. THE EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN MR. DICKERSON'S CONVICTIONS.

Mr. Dickerson first argues that the evidence is insufficient to sustain his robbery convictions. He maintains that the evidence, in particular the testimony of Messrs. Savage and Perry, was that he intended to shoot someone, not to rob anyone, when he encountered Mr. Gaskins.

The State argues that a reasonable fact-finder could infer that Mr. Dickerson, "having just been robbed, intended to respond in kind" and that he "was upset and

attempted to locate his assailant" when "not all of his property was returned." The State further argues that a reasonable fact-finder could infer that Mr. Dickerson and Mr. Perry, "armed with loaded guns," got out of Mr. Savage's vehicle intending to find Little Boogie and retrieve Mr. Dickerson's stolen property, and that they instead encountered Mr. Gaskins and killed him.

"The test of appellate review of evidentiary sufficiency is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (quoting *State v. Coleman*, 423 Md. 666, 672 (2011)). That same "standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Painter v. State*, 157 Md. App. 1, 11 (2004) (internal quotation marks and citation omitted). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (quoting *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "[w]e defer to the fact finder's 'opportunity to assess the credibility of

witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

***Elements of the Offenses***

"Robbery is defined as 'the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear.'" *Hall v. State*, 233 Md. App. 118, 138 (2017) (quoting *Metheny v. State*, 359 Md. 576, 605 (2000)). "Armed robbery" is a robbery committed "with a dangerous weapon . . . or by displaying a written instrument claiming that the person has possession of a dangerous weapon." Md. Code Ann., Crim. Law § 3-403(a) (Repl. 2012; Supp. 2018). Both robbery and armed robbery are specific intent crimes and require "a larcenous intent." *Fetrow v. State*, 156 Md. App. 675, 687 (2004).

"A person is guilty of an attempt when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime[.]" *Hall*, 233 Md. App. at 138 (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). In other words, attempt "requires a 'specific intent to commit the offense coupled with some overt act in furtherance of the intent which goes beyond mere preparation.'" *Carroll v. State*, 428 Md. 679, 697 (2012) (quoting *Dixon v. State*, 364 Md. 209, 238 (2001)). That "intent need not be proved by direct evidence . . . [but] may be inferred as a matter of fact from the actor's conduct and the attendant circumstances." *In re David P.*, 234 Md. App. 127, 138 (2017) (quoting *Young v. State*, 303 Md. 298, 306 (1985)).

"To establish a conspiracy, the State must prove that two or more persons combined or agreed to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Savage v. State*, 226 Md. App. 166, 174 (2015). "The essence of a criminal conspiracy is an unlawful agreement." *Mitchell v. State*, 363 Md. 130, 146 (2001) (quoting *Townes*, 314 Md. at 75). Thus, "[t]he crime . . . is complete when the agreement to undertake the illegal act is formed," *Savage*, 226 Md. App. at 174; "no overt act in furtherance of the agreement need be shown," *Mitchell*, 363 Md. at 146 (quoting *Townes*, 314 Md. at 75). "Conspiracy does not require a formal agreement or detailed discussion, so long as there is 'a meeting of the minds.'" *Carroll*, 428 Md. at 698 (quoting *Khalifa v. State*, 382 Md. 400, 436 (2004)). "A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred." *Hall*, 233 Md. App. at 138. "When the object of the conspiracy is the commission of another crime . . . the specific intent required for the conspiracy is not only the intent required for the agreement but also, pursuant to that agreement, the intent to assist in some way in causing that crime to be committed." *Mitchell*, 363 Md. at 146.

The important distinction between conspiracy and attempt for our purposes is thus that conspiracy, unlike attempt, requires an agreement; whereas attempt, unlike conspiracy, "requires some overt act be taken in furtherance of the crime." *Carroll*, 428 Md. at 699.

***The Attempt Convictions***

We hold that the evidence is sufficient to sustain Mr. Dickerson's robbery-related convictions. That evidence, when viewed in the light most favorable to the State, showed

that Mr. Dickerson was robbed at gunpoint by someone he identified as Little Boogie; that Mr. Dickerson was upset about the robbery and attempted to recover the items that were stolen from him; that he, Mr. Savage, and Mr. Perry, at Mr. Dickerson's direction, went to a location where they recovered some money, but not all of Mr. Dickerson's possessions; that Mr. Dickerson's frustration continued to build after that partial recovery; that the three men returned to the scene of the robbery with weapons; that the three, still at Mr. Dickerson's direction, went to the Waterside apartment complex, where they believed Little Boogie could be located; that Mr. Perry, who had been traveling with Mr. Dickerson as they obtained weapons and sought to recover Mr. Dickerson's property, believed they were there "to do a robbery"; and that Messrs. Perry and Dickerson entered the complex with hoodies pulled over their heads and with firearms.

From that evidence, the jury could have drawn a reasonable inference that Mr. Dickerson was upset after having been robbed and that he intended to recover, by force if necessary, his stolen items. A reasonable inference could also be drawn that Mr. Dickerson, in effectuating that intent, went to the Waterside apartment complex and, armed with a handgun, exited Mr. Savage's vehicle with the intention of finding the person who had robbed him and robbing the stolen items back. Thus, sufficient evidence was presented to permit the jury to infer that Mr. Dickerson intended to commit an armed robbery and that he took a substantial step toward committing that crime.

Mr. Dickerson's most compelling argument against his conviction for attempted armed robbery is that upon encountering Mr. Gaskins he opened fire instead of demanding

the return of his stolen items. That, Mr. Dickerson argues, combined with statements such as "they going to die" and an absence of an express discussion of robbery, demonstrates that his intent was to shoot, not to rob. To be sure, the evidence could have supported an inference that his intent all along was just to kill someone. But that is not the only inference supported by the evidence. Moreover, our case law is clear that the "failure to consummate the intended crime is *not* an essential element of an attempt." *Townes*, 314 Md. at 76; *see Peters v. State*, 224 Md. App. 306, 355 (2015) ("An attempt to commit a crime is, in itself, a crime.") (quoting *Townes*, 314 Md. at 75). That Mr. Dickerson did not actually demand the return of his stolen items from Mr. Gaskins before shooting him does not negate the evidence from which the jury was reasonably able to infer that Mr. Dickerson wanted the return of his belongings and intended—at least up to the point shortly before he opened fire at Mr. Gaskins—to rob them back.

In reaching our conclusion that the evidence was sufficient to support Mr. Dickerson's attempt convictions, we apply the "substantial step" test first adopted by the Court of Appeals in *Young v. State* "to determine whether a person has attempted to commit a crime." 303 Md. 298, 311 (1985). Under that test, "[a] person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime whether or not his intention be accomplished." *Id.* (based on § 5.01(1)(c) of the Model Penal Code). To qualify as a substantial step, conduct must be "strongly corroborative of the actor's criminal intention." *Young*, 303 Md. at 311-12.

The Court in *Young* made clear that an individual need not attempt to complete the criminal act to be found guilty of attempt by listing several types of conduct that "shall not be held insufficient as a matter of law to constitute a substantial step." *Id.* at 312:

> (a) lying in wait, searching for or following the contemplated victim of the crime;
>
> (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
>
> (c) reconnoitering the place contemplated for the commission of the crime, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity, such as taking flight upon appearance of a police officer, refusing to identify himself, or manifestly endeavoring to conceal himself or any object;
>
> (d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;
>
> (e) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;
>
> (f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances; or
>
> (g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

*Id.* (based on § 5.01(1)(c) of the Model Penal Code).

In *Young*, the Court upheld a conviction for armed robbery where the police had observed the defendant casing a bank "in a manner not usual for law-abiding individuals"; the defendant had attempted to conceal his presence behind the bank and had disguised himself with an eyepatch, a raised jacket collar, sunglasses and a knit cap pulled over his forehead; the defendant wore surgical gloves and clipped a scanner with a police band frequency on his belt; he partially hid his face as he approached the bank with one hand in

a jacket pocket that contained a loaded firearm; and he attempted to open the bank's front door. *Young*, 303 Md. at 313. When Mr. Young found the bank's door locked, he returned to his car, removed the items he had used to disguise himself, and drove away. *Id.* at 313-14.[2] The Court observed that, at a minimum, Mr. Young's attempt to open the bank door constituted the required "'substantial step' toward the commission of the intended crime" because it was "strongly corroborative of his criminal intention." *Id.* at 314.

In *Hall*, which is even closer to our case, the defendants argued that the evidence was insufficient to support a conclusion that they intended to commit armed robbery before they started shooting at victims who were attempting to flee. 233 Md. App. at 138. Although the State did not introduce any "testimony regarding a taking of or a demand for property," this Court nonetheless concluded that "there was evidence sufficient to permit a reasonable inference that the men attempted to commit armed robbery based on the fact that [they] wore ski masks and brandished guns when they forced their way into [the victims'] apartment." *Id*. at 139.

Turning back to Mr. Dickerson, we agree with the State that the evidence was sufficient for the jury to conclude beyond a reasonable doubt that he intended to commit an armed robbery when he took a substantial step toward doing so that went well beyond mere preparation. That step occurred, at a minimum, when he and Mr. Perry went into the Waterside apartment complex, both armed and with hoodies pulled over their heads, after

[2] The Court also noted that Mr. Young asked the officers who apprehended him "how much time he could get for attempted bank robbery," a question the Court observed "was not without significance." *Young*, 303 Md. at 314.

having spent a substantial amount of time attempting to track down the items that had been stolen from him and the people he believed were responsible. That Mr. Dickerson then chose to open fire at Mr. Gaskins rather than rob him—or continue searching for Little Boogie—does not negate the conduct that preceded that any more than did Mr. Young's decision to walk away from the bank.

The jury concluded that Mr. Dickerson's intent was to commit armed robbery at the Waterside complex. We do not know, nor is it important that we know, what the jury believed caused Mr. Dickerson to change course to murder. What matters for our inquiry is that the evidence was sufficient for the jury to conclude that he intended to commit an armed robbery and took a substantial step toward that end.

***Conspiracy Convictions***

The same evidence also permits a reasonable inference that, at some point between when Mr. Dickerson was robbed and when he shot Mr. Gaskins, Mr. Dickerson conspired with Mr. Savage and/or Mr. Perry to commit armed robbery and robbery. That is, the concerted actions of the three men in obtaining a weapon for Mr. Dickerson, recovering some of Mr. Dickerson's stolen items, and then driving back to the scene of the robbery and to the Waterside complex to locate the robber, permitted a reasonable inference that the men had a "meeting of the minds" to commit armed robbery. *See Jones v. State*, 132 Md. App. 657, 660 (2000) ("If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may . . . infer a prior agreement by them to act in such a way."). Although Mr. Dickerson never expressly stated such an intent, there was ample

circumstantial evidence from which a common scheme may be inferred. In fact, Mr. Perry testified that he believed, based on his interactions with Mr. Dickerson that afternoon, that the men had obtained weapons and traveled to Waterside apartment complex for precisely that purpose. Accordingly, the evidence is sufficient to sustain Mr. Dickerson's convictions of conspiracy to commit armed robbery and conspiracy to commit robbery.

## II. THE TRIAL COURT DID NOT ERR IN ADMITTING TESTIMONY THAT MR. DICKERSON'S INTERACTIONS WITH THE PERSON HE BELIEVED SET UP HIS ROBBERY RELATED TO "DRUGS."

Mr. Dickerson next argues that the trial court erred in permitting Mr. Perry to testify that Mr. Dickerson interacted with Pootney, the woman he believed had arranged the robbery, regarding "[d]rugs." The relevant portion of the transcript, which followed Mr. Perry's testimony that Mr. Dickerson thought Pootney had "set him up," is:

[STATE]: Do you know if [Mr. Dickerson] ever interacted with Pootney?

[WITNESS]: Yeah.

[STATE]: Do you know what [Mr. Dickerson] did when he interacted with Pootney?

[WITNESS]: Drugs.

[DEFENSE]: Objection, Your Honor.

THE COURT: Overruled.

[STATE]: If [Mr. Dickerson] called Pootney – strike that. If [Mr. Dickerson] wanted to get up with Pootney how would he do that?

[WITNESS]: He would call her.

[STATE]: Would he always call her from his phone?

[WITNESS]: Yeah.

[STATE]: Okay. Would he ever call Pootney for anything else other than the drugs?

[WITNESS]: Not that I know of.

Mr. Dickerson maintains that this testimony should have been excluded as irrelevant because it "does not make whether [he] killed Mr. Gaskins any more or less likely" and because it constituted "inadmissible prior bad acts evidence." He also contends that, even if relevant, the testimony should have been excluded because the undue prejudice from the evidence outweighed its probative value.

The State counters that Mr. Perry's testimony was relevant because it provided context for the robbery, which was the motivation for Mr. Dickerson's crimes. The State also contends that, even if the trial court erred in admitting the testimony, any error was harmless because the reference to drug activity was brief and because the evidence against Mr. Dickerson was overwhelming.

Mr. Dickerson's claims with respect to Mr. Perry's testimony are without merit. Evidence is relevant if it "tends 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." Md. Rule 5-401. In other words, evidence is relevant if it is both material and probative. "Evidence is material if it bears on a fact of consequence to an issue in the case." *Smith v. State*, 218 Md. App. 689, 704 (2014). "Probative value relates to the strength of the connection between the evidence and the issue, to the tendency of the

evidence 'to establish the proposition that it is offered to prove.'" *Id.* (quoting *Williams v. State*, 342 Md. 724, 737 (1996)). Evidence that is relevant is generally admissible; "[e]vidence that is not relevant is not admissible." Md. Rule 5-402. That said, establishing relevancy "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). We review the court's determination of relevancy under a de novo standard. *State v. Simms*, 420 Md. 705, 725 (2011).

Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Md. Rule 5-403. "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*, 218 Md. App. at 705. In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State*, 236 Md. App. 533, 549 (2018) (quoting Md. Rule 5-403). Moreover, "[t]o justify excluding relevant evidence, the 'danger of unfair prejudice' must not simply outweigh 'probative value' but must, as expressly directed by Rule 5-403, do so 'substantially.'" *Newman*, 236 Md. App. at 555 (quoting Md. Rule 5-403). "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

In addition, Rule 5-404(b) prohibits the admission of a defendant's prior "bad acts" if that evidence is offered "to prove the character of a person in order to show action in

conformity therewith." That Rule "prohibits other bad acts evidence to protect against the risk that a jury will assume that because a defendant committed other crimes, he is more likely to have committed the crime for which he is on trial." *Smith v. State*, 232 Md. App. 583, 599 (2017). "A 'bad act' is an act or conduct 'that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit.'" *Stevenson v. State*, 222 Md. App. 118, 148 (2015) (quoting *Smith*, 218 Md. App. at 709).

Evidence of a defendant's prior bad acts "may be admitted, however, if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit a crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989). "Bad act" evidence has special relevance if it shows "motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5-404(b). Thus, "[m]otive is a recognized exception to the general rule against admission of other crimes evidence." *Jackson v. State*, 230 Md. App. 450, 459 (2016). "To be admissible as evidence of motive, however, the prior conduct must be 'committed within such time, or show such relationship to the main charge, as to make the connection obvious,' . . . that is to say they are 'so linked in point of time or circumstances as to show intent or motive.'" *Snyder v. State*, 361 Md. 580, 605 (2000) (quoting *Johnson v. State*, 332 Md. 456, 470 (1993)).

Whether "bad act" evidence has special relevance is a legal determination that we review de novo. *Stevenson*, 222 Md. App. at 149. "If we determine that the 'bad act' evidence in question has special relevance, then we balance the probative value of and need

for the evidence against the likelihood of undue prejudice." *Id.* (quoting *Smith*, 218 Md. App. at 710). That "'analysis implicates the exercise of the trial court's discretion,' and we will only reverse the court's balancing determination if the court abused its discretion." *Id.* (quoting *Wynn v. State*, 351 Md. 307, 317 (1998)).[3]

Against that backdrop, we hold that the trial court did not err in permitting Mr. Perry to testify that Mr. Dickerson did "[d]rugs" when he interacted with Pootney. That testimony tended to show (1) why Mr. Dickerson met with Pootney prior to being robbed, (2) why, during that meeting, Pootney would approach Mr. Dickerson and throw a clear plastic bag through the car window, (3) why Mr. Dickerson might believe that he had been set up for the robbery, and (4) why he was so intent on retrieving what had been taken from him. Thus, Mr. Perry's testimony was relevant in establishing the first link in a chain of events that led to Mr. Dickerson's commission of the charged crimes, as well as his motivation for doing so.

We also conclude that the evidence's probative value was not substantially outweighed by the danger of unfair prejudice. Although Mr. Perry's brief testimony regarding Mr. Dickerson's interactions with Pootney may have resulted in some mild prejudice, that prejudice was neither unfair nor did it substantially outweigh the evidence's

[3] Before admitting evidence of "other crimes," a trial court must also determine whether the defendant's involvement in the "other crimes" can be established by clear and convincing evidence. *Faulkner*, 314 Md. at 634-35. Mr. Dickerson does not challenge that aspect of the trial court's decision.

probative value.[4] *See Odum v. State*, 412 Md. 593, 615 (2010) ("It has been said that '[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.'") (quoting Joseph F. Murphy, Jr., *Maryland Criminal Evidence Handbook* § 506(B) (3d ed. 1993 & Supp. 2007)). Accordingly, we hold that the trial court did not abuse its discretion in admitting the evidence.

**JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**

[4] Mr. Dickerson argues that the evidence was prejudicial because it showed that he was "dealing in drugs." That assertion is not supported by the record. Considering the question and answer together, Mr. Perry's testimony was that Mr. Dickerson "did" drugs with Pootney, and the context of the interaction about which the jury heard implied that Pootney supplied drugs to Mr. Dickerson, not the reverse. Moreover, the record reflects that the trial court was aware that such an implication might be possible and took measures to prevent the State from suggesting that Mr. Dickerson was dealing in drugs.