Circuit Court for Charles County
Case No.: C-08-CR-17-000013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2250

September Term, 2017

TERRENCE NORMAN TURNER, JR.

v.

STATE OF MARYLAND

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

JJ.

Opinion by Thieme, J.

Filed: January 8, 2019

Appellant, Terrence Norman Turner, Jr., was indicted in the Circuit Court for Charles County, Maryland, and charged with insurance fraud and false statement to a police officer. After he was convicted on both counts by a jury, appellant was sentenced to a total of fifteen years, with all but six months suspended, to be followed by five years' unsupervised probation upon release. Appellant timely appealed and presents the following questions for our review:

> 1. Was it error to deny the motion to suppress evidence seized pursuant to a "no-knock" search warrant?
>
> 2. Was it error to allow evidence of the criminal investigation of arson and conspiracy to commit arson in Virginia, where Appellant was not charged?
>
> 3. Was it error to exclude evidence that the insurer paid Appellant's claim for loss of his car?

For the following reasons, we shall affirm.

BACKGROUND

Motion

On January 16, 2017, Detective Eric Weaver, of the Charles County Sheriff's Office, executed a search warrant at 7915 Barclay Place in White Plains, Maryland. The affidavit in support of the application for a search warrant, admitted into evidence at the motions hearing, alleged that appellant reported that his 2015 Jeep Cherokee had been stolen from his Charles County residence, on or around September 14, 2016. The Jeep was found partially burned the next day in Alexandria, Virginia. Further investigation led the police to suspect that appellant was involved in the destruction of his own vehicle. The application prayed for a search warrant to search appellant's residence in Charles County

and seize, among other specified items, his cellphones, electronic devices, auto repair bills, insurance paperwork, auto loan documents, and bank records. The application also requested authorization to enter appellant's residence without knocking. More specifically, the affidavit provided, in pertinent part, as follows:

> Based on the fact that your Affiant knows that Turner has law enforcement training and is still in possession of a handgun and body armor that could be located at the premises, your affiant further requests that this search and seizure warrant be executed as a "no knock warrant." Your affiant knows through his training and experience that individuals who are in possession of firearms and body armor may have time to arm themselves if given the opportunity. Your Affiant knows that given the opportunity to arm themselves, this increases the risk of danger for both executing law enforcement officers and any individuals who may be in the residence. Your Affiant also knows that the evidence your Affiant is seeking can easily and quickly be destroyed by suspects if given the opportunity.

By way of further background, the affidavit also provided:

> Your Affiant learned Turner is employed as a sworn police officer with the Metropolitan Police Department in Washington D.C. Your Affiant also learned that Turner is currently suspended and under investigation by the same agency. The exact nature of the investigation is unknown to Your Affiant, however it was learned that Turner was on leave pending termination. Turner had turned in his duty weapon and badge, but according to the Metropolitan Police Department, Turner still had his agency issued body armor and an additional handgun in his possession. Deputy Zarkauskas informed your Affiant officers investigating Turner in D.C. were aware of several hidden compartments that were located in Turner's Jeep. Your Affiant knows through training and experience, hidden compartments are built into Vehicles of people who are commonly involved in trafficking illicit items.

On cross-examination, Detective Weaver testified that the charges in this case, insurance fraud and providing a false statement, were not "in [and] of themselves" violent crimes. On redirect, Detective Weaver agreed that an additional reason for obtaining a no-knock warrant was due to a concern that evidence could be destroyed.

At the hearing, appellant's counsel argued that the no-knock warrant was unnecessary because of the nature of the crimes involved. Appellant further contended that the only reason stated in the warrant for seeking the no-knock provision was because he was a law enforcement officer and possessed a handgun and body armor. Counsel also noted that appellant did not have a criminal record and was cooperative with the fire department investigators, and, as a law enforcement officer, was unlikely to destroy evidence.

The State responded that the standard of review of the no-knock provision was whether there was reasonable suspicion that such a warrant "would be useful." The State also noted that appellant had been previously suspended by the Metropolitan Police Department and was on "leave pending termination." The court denied the motion, finding that "there was reasonable suspicion and again they had very specific facts that were laid out in the application indicating that the Defendant had a gun, had armor and could have posed a danger and so I do believe that that was appropriate."

Trial

On September 15, 2016, first responders with the City of Alexandria fire and police departments responded to a reported vehicle fire near 123 Hilton Street, Alexandria, Virginia. The unattended and unoccupied vehicle, a silver Jeep, was found burning in the residential neighborhood at around 6:30 a.m.[1]

[1] There was surveillance video in the area that suggested the vehicle was burning as early as 6:01 a.m.

An expert in the field of fire investigation, Deputy Fire Marshall Joseph Zarkaukus, employed with the City of Alexandria, Virginia, responded to the scene and determined that the fire originated in the right rear passenger seat area. Zarkaukus found a two-and-a-half-gallon gas can, a two liter bottle, and some papers, that he believed could have been used to ignite the fire. Zarkaukus opined that the fire "was an incendiary fire, which means it was a fire that was set in a place where a fire did not belong." He concluded that "somebody set this fire."

After examining paperwork in the car and finding the license plate nearby in the woods, Deputy Fire Marshall Zarkaukus ascertained that the vehicle belonged to appellant. Zarkaukus called appellant at around 8:22 a.m. and informed him that his vehicle was found, burned, in Alexandria. During that initial conversation, it appeared that appellant had already reported the vehicle as stolen to local police. Appellant told Zarkaukus that he had both keys for the vehicle in his possession. No keys were found at the scene of the fire.

Officer David Sylvestre, of the Charles County Sheriff's Office, responded to appellant's address to take a stolen vehicle report. Appellant indicated that he parked the vehicle outside his residence at around 10:00 p.m. the prior evening. According to Officer Sylvestre, there were no signs, such as broken glass, indicating that the vehicle had been broken into at appellant's home.

Matthew McVicar, an investigator with Progressive Insurance, met with appellant on September 15, 2016, the same day appellant made a claim for his stolen vehicle. Appellant discovered that his car was missing between 7:00 and 8:00 a.m., that he thought

he locked it the night before, and that he had both of his keys, the only keys for the vehicle, in his possession when the vehicle was stolen. Appellant also told McVicar that he had been with his cousin, Steven Moncree, the day before the theft, and spoke to him on the day of the theft.

Christopher Arnold, a forensic examiner expert, examined the Jeep and noted that none of its external parts, such as the wheels and tires, nor its internal components, such as the audio components, were missing. There was also no indication that the motor, the battery, the fuses, the ignition modules or the internal gear cables had been tampered with. Arnold also was able to start the Jeep using the two key fobs provided by appellant during the investigation. Arnold explained that the fobs were electronic devices, with an estimated replacement valued of $500, and any duplicates would most likely have to have been made at a dealership.

Arnold ultimately opined that the person who drove the vehicle from Charles County to Alexandria had a key fob. He also testified that "[w]ith a reasonable degree of scientific certainty, this vehicle was not stolen, and was last operated and . . . driven and operated with the proper key fob inside the passenger compartment."

On October 13, 2016, appellant was interviewed by Deputy Fire Marshall Zarkaukus, as well as an unidentified Alexandria city detective, at the Alexandria police station. It was at that interview that appellant revealed that his vehicle had been involved in an accident the previous summer, and had been subject to multiple repairs.

During the course of this interview, appellant was informed that Steven Moncree's palm print was found on the exterior of said vehicle. Appellant initially denied that he

knew Moncree. However, around thirty minutes after the interview concluded, appellant called Deputy Fire Marshall Zarkaukus and conceded that Moncree was his cousin. Appellant also asked the deputy, "What can we do to make this go away?" Zarkaukus responded that, if appellant were to produce six text messages that had been deleted from his cellphone, "we can help clear this up." Appellant did not respond to this suggestion, nor were the deleted texts ever recovered.

Deputy Fire Marshall Zarkaukus, as well as Detective Eric Weaver, of the Charles County Sheriff's Office, both testified that the police obtained search warrants for appellant's residence and recovered some cell phones. The data from those cell phones was downloaded and was admitted into evidence. According to Detective Weaver, these records showed seventeen (17) contacts between appellant's cell phone and Moncree's cell phone on September 14th and 15th, 2016.

Detective Austin, of the Charles County Sheriff's Office, accepted as an expert in forensic cellular analysis and historical cell site analysis, testified that, for a short period of time on the afternoon of September 14, 2016, the day before the incident, both appellant's cell phone and Moncree's cell phone were located in the vicinity near Moncree's residence. Detective Austin further testified that, at around 6:30 a.m. on September 15, 2016, Moncree's phone was located near the scene of the car fire. There were also a series of text messages, at around the same time, between appellant's and Moncree's cell phones. Later that same day, at around 10:55 a.m., there was evidence that appellant's cell phone was located back near Moncree's residence.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the motion court erred in denying his motion to suppress because the "no knock" warrant was not justified in this case. The State responds that there was a substantial basis to justify issuance of a "no knock" warrant, and that, in any event, even if the police should have knocked and announced their presence, suppression of the evidence is not the proper remedy.

"When reviewing the denial of a motion to suppress, the record at the suppression hearing is the exclusive source of facts for our review." *Darling v. State*, 232 Md. App. 430, 445, *cert. denied*, 454 Md. 655 (2017). We consider the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the party prevailing on the motion, in this case, the State. *Barnes v. State*, 437 Md. 375, 389 (2014); *Grimm v. State*, 232 Md. App. 382, 396 (2017). Ordinarily, we give great deference to a hearing judge's factual findings, and we will not disturb them unless they are clearly erroneous. *Henderson v. State*, 416 Md. 125, 143-44 (2010); *Darling*, 232 Md. App. at 445. We review the motions court's factual findings for clear error, but we make our own independent constitutional appraisal of the record, "reviewing the relevant law and applying it to the facts and circumstances of th[e] case." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010); *accord Moore v. State*, 422 Md. 516, 528 (2011).

In this case, we are concerned with issuance and execution of a search warrant. "When the State seeks to introduce evidence obtained pursuant to a warrant, 'there is a presumption that the warrant is valid[,]' and 'the burden of proof is allocated to the

defendant to rebut that presumption by proving otherwise.'" *Volkomer v. State*, 168 Md. App. 470, 486 (2006) (quoting *Fitzgerald v. State*, 153 Md. App. 601, 625 (2003)). "When evidence has been recovered in a warrant-authorized search, it is not the task of a court ruling on a motion to suppress, or an appellate court reviewing the suppression decision on appeal, to conduct a *de novo* review of the issuing judge's probable cause decision." *State v. Faulkner*, 190 Md. App. 37, 46 (2010) (citing *State v. Jenkins*, 178 Md. App. 156, 163 (2008)). "Rather, those courts are to determine whether the issuing judge had a 'substantial basis' for finding probable cause to conduct the search." *Id*. "The substantial basis standard involves something less than finding the existence of probable cause, and is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding in a trial setting." *State v. Coley*, 145 Md. App. 502, 521 (2002) (internal quotation marks omitted) (citations omitted). "Moreover, reviewing courts must assess affidavits for search warrants in 'a commonsense and realistic fashion,' keeping in mind that they 'are normally drafted by nonlawyers in the midst and haste of a criminal investigation.'" *State v. Faulkner*, 190 Md. App. at 47 (quoting *United States v. Ventresca*, 380 U.S. 102, 108 (1965)).

In this case, police used a "no knock" warrant. Criminal Procedure § 1-203 provides, in pertinent part:

> (vi) An application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose, on the grounds that there is reasonable suspicion to believe that, without the authorization:

> 1. the property subject to seizure may be destroyed, disposed of, or secreted; or
>
> 2. the life or safety of the executing officer or another person may be endangered.

Md. Code (2001, 2018 Repl. Vol.) § 1-203 of the Criminal Procedure ("Crim. Proc.") Article.

The legislature added the no-knock provision, *i.e.*, "without giving notice of the officer's authority or purpose," to Section 1-203 (a) (vi) as of October 1, 2005. *See Ford v. State*, 184 Md. App. 535, 558 (2009). As such, "no-knock" warrants are now authorized under the Criminal Procedure Article. *Cf. Davis v. State*, 383 Md. 394, 427-28 (2004) (asserting that judicial officers may not issue "no-knock" warrants and that "the propriety of a "no-knock" entry will be reviewed and determined on the basis of the facts known to the officers at the time of entry, rather than at the time of the application for the warrant") (superseded by statute).

Next, although the parties discuss the standard of review concerning no-knock entries, we are unable to find a current appellate case discussing the standard applicable to no-knock warrants. As a search warrant, we ordinarily apply the substantial basis test. It is arguable that the same standard applies to no-knock warrants. Indeed, prior to the Court of Appeals' decision in *Davis, supra*, which, as noted, was, in turn, superseded by statute in 2005 by Crim. Proc. § 1-203 (a) (vi), that is precisely what this Court held in our opinion in *Davis*:

> [W]hen the suppression hearing court reviews the issuing judge's decision to include a no-knock entry provision in the search warrant, the suppression hearing court should uphold that provision as long as the warrant application

> provided the issuing judge with a substantial basis for concluding that there existed a reasonable suspicion that, under the circumstances in which the warrant was to be executed, the knock and announce requirement would be dangerous to the executing officers or would result in the destruction of the items described in the search warrant.

Davis v. State, 144 Md. App. 144, 152 (2002) (citing *Richards v. Wisconsin*, 520 U.S. 385 (1997), footnote omitted), *rev'd*, 383 Md. 394 (2004) (superseded by Crim. Proc. § 1-203 (a) (vi)); *see also State v. Riley*, 147 Md. App. 113, 122 (2002) (observing "the deference might be even greater in the case of a no-knock warrant because the application for it need not satisfy the higher probable cause requirement, but only the less demanding requirement of reasonable suspicion[.]"), *abrogated by Davis, supra*, 383 Md. at 422, in turn superseded by Crim. Proc. § 1-203 (a) (vi), *supra*; 2 LaFave, *Search and Seizure*, § 4.8 (g) at 883 (5th ed. 2012) ("[T]he showing the police must make to obtain a no-knock warrant is the same showing they must make to justify their own decision to disperse with the knock and announce requirement").

In evaluating whether there was a substantial basis to find reasonable suspicion to issue a no-knock warrant, appellant cites the following:

> In order to justify a "no-knock" entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. This standard-as opposed to a probable-cause requirement-strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries. This showing is not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged.

Richards v. Wisconsin, 520 U.S. at 394-95 (internal citations omitted).[2]

As the Court of Appeals explained:

> [T]he requirement that particularized circumstances establishing a reasonable suspicion of exigency be shown, does not mandate that officers show, to an absolute certainty, that their safety is in jeopardy or that evidence unquestionably will be destroyed, but rather, that the police be able to point to *some* articulable reason why the preference for knocking and announcing their presence would not be appropriate in that case.

State v. Carroll, 383 Md. 438, 460 (2004) (emphasis in original).

Here, the police knew that appellant was previously employed as a police officer with the Metropolitan Police Department and was currently under investigation. Although appellant turned in his duty weapon and his badge, the police had reason to believe that appellant still possessed a handgun and body armor. The affiant averred that, in his training and experience, individuals who possess firearms and body armor may arm themselves if given the opportunity and that there was an increased risk of danger, not only to the executing officers, but also any individuals present in the home when the search warrant was executed. There was also a concern that evidence could be destroyed under such circumstances. We are persuaded that there was a substantial basis to conclude that a no-knock entry was supported by reasonable articulable suspicion.

Moreover, even if a no-knock entry was unwarranted, suppression of the evidence was not the appropriate remedy. In *Ford v. State*, 184 Md. App. 535 (2009), a case involving an allegation that Ford was engaged in narcotics distribution from Ford's

[2] In *Richards*, the police requested a "no-knock" search warrant, but that request was struck by the issuing judge. *Richards*, 520 U.S. at 388.

residence, police officers requested a "no-knock" search warrant for that location because "1) a check of Ford's background that revealed he had prior 'guns or weapon charges' filed against him and 2) 'training, knowledge and experience . . . [leading the officers who applied for the warrant to believe] that drug dealers commonly have in their possession, on their persons, in their cars, or in their residence's firearms. . . .'" *Ford*, 184 Md. App. at 539. A judicial officer issued the no-knock warrant, and the warrant was duly executed by members of the Baltimore County Police Department. *Id.* During the ensuing search, police recovered, inter alia, "43 gel caps filled with white powder that was later determined to be heroin." *Id.* at 539.

On appeal, after he was convicted of possession with intent to distribute heroin, Ford challenged the no-knock warrant's allegations because they were based on "nothing more than generic statements about drug traffickers and presented no evidence that Mr. Ford posed a threat to officer safety." *Ford*, 184 Md. App. at 559. The State responded that: (1) there were exigent circumstances justifying the issuance of a no-knock warrant; and, (2) the entry was nevertheless reasonable because, even if the issuing judge erred in signing the warrant, the evidence need not be suppressed under the reasoning of *Hudson v. Michigan*, 547 U.S. 586, 599 (2006) (declining to apply the exclusionary rule to a violation of the "knock and announce" rule), and *State v. Savage*, 170 Md. App. 149, 198-211 (2006) (observing that the evidence was found as a result of the search warrant, and not the "knock and announce" violation). *Ford*, 184 Md. App. at 559. The *Ford* Court declined to reach the State's first rationale concerning whether the no-knock provision was justified by exigency, and concluded that, under the second stated rationale, "1) the police had a search

warrant that set forth probable cause for its issuance and 2) even if the police had knocked and announced their presence, waited for an appropriate period of time for a response, and then entered Ford's house, the heroin would still have been found." *Ford*, 184 Md. App. at 561-62. A similar conclusion is warranted in this case. Even if the police had knocked and announced their presence before entering appellant's house, the evidence related to the alleged insurance fraud, including but not limited to appellant's cellphones, would still have been found. The court properly denied the motion to suppress.

II.

Appellant next asserts that the court erred in admitting other crimes evidence concerning the arson and conspiracy to commit arson in Virginia. The State responds that the court properly exercised its discretion because the evidence was not other crimes evidence; instead, it was evidence relevant to the underlying charges in this case.

Prior to trial, the appellant moved *in limine* to exclude any evidence of the criminal investigation by Virginia law enforcement, noting that Virginia declined to prosecute appellant for arson and conspiracy to commit arson in this matter. Appellant continued that "the criminal investigation would seriously mislead and confuse the jury." Appellant also argued that the evidence of the investigation in Virginia was inadmissible other crimes evidence.

The State responded that Virginia's decision not to prosecute was irrelevant. The State also indicated that it intended to call a Deputy Fire Marshall from Alexandria, Virginia to testify "about the origin and source of the fire in this case." The State anticipated that this expert would conclude that the fire was intentionally set. The State

continued that, because the fire occurred shortly after the car was reported stolen, this was relevant to the charge of making a false statement to the police. After noting that the State's theory of the case was that appellant's co-defendant, Steven Moncree, set the fire, the State explained:

> The reality is, Your Honor, in an insurance fraud case where the allegations and what we have to prove is that he made a false statement in order to get his benefit, the State essentially has to prove the car wasn't stolen, because he said it wasn't [sic] stolen.
>
> And the facts of that, it's another crime as part of the same case, is that the car was found a few hours later, on fire. . . .

The court denied appellant's motion to exclude evidence from Virginia, stating as follows:

> The Defense has asked the Court to keep out any mention of the . . . of the evidence that Mr. Turner's car was set on fire intentionally, and that there was not evidence of auto theft. Again, I don't know what the evidence is going to be, but at this point I think the State is entitled to pursue that.
>
> Yes, is it prejudicial against Mr. Turner? Certainly. But is it unfairly so? Based on what he is charged with here, the State is going to have to make that link, and they are entitled to put on a case to show that.

After making its ruling, the court advised appellant as follows:

> So, again, what I will allow you to do at the appropriate time, if you want to make a continuing objection to that, you may do so, without having to object[] to everything. But still, I want you to be able to preserve your record for that.

Thereafter, during trial, appellant never requested a continuing objection, nor did he offer any specific objection to this alleged other crimes evidence. Notably, he did not object when the Deputy Fire Marshall opined that the fire was incendiary, and that "[t]he origin of the fire was the paper, and plastic bottles, and gas can in the rear, right rear

passenger area of the vehicle." There also was no objection when Zarkaukus testified that appellant initially denied knowing his cousin, Moncree. And, there was no objection when Zarkaukus identified several photographs of the vehicle fire, nor when the gas can and water bottles were admitted. Moreover, there was no objection when Arnold opined that the person who drove the vehicle from Charles County to Alexandria had a key fob. Nor was there any objection when Arnold testified that "[w]ith a reasonable degree of scientific certainty, this vehicle was not stolen, and was last operated and . . . driven and operated with the proper key fob inside the passenger compartment." We hold that this issue is unpreserved for our review. *See King v. State*, 434 Md. 472, 479 (2013) (observing that it is well-established that Maryland's appellate courts ordinarily will not consider "any issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'") (quoting Md. Rule 8-131 (a)); *See also Haslup v. State*, 30 Md. App. 230, 239 (1976) (appellate court may determine *sua sponte* whether party has preserved issue for appellate review).

Moreover, even if preserved, "[g]enerally, whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard." *Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 48 (2016) (internal quotations and citation omitted). "Subject to several exceptions, evidence of other crimes or bad acts is not admissible in Maryland." *Hurst v. State*, 400 Md. 397, 406 (2007) (citing cases); *see also Burris v. State*, 435 Md. 370, 385 (2013) (observing that Rule 5-404 (b) is a rule of exclusion) (citations omitted). Maryland Rule 5-404 (b) reflects this principle by "restrict[ing] the admissibility

of evidence of 'other crimes,' unless that evidence has special relevance to the case." *Odum v. State*, 412 Md. 593, 609 (2010) (citation omitted). In short, the "plain language of Md. Rule 5-404 (b) does not permit the admissibility of propensity evidence." *Hurst*, 400 Md. at 417. Evidence of other crimes may be admissible, however, if the evidence has "'special relevance, i.e. is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character.'" *Hurst*, 400 Md. at 408 (quoting *Harris v. State*, 324 Md. 490, 500 (1991)).

Likewise, Rule 5-404(b) does not prohibit the introduction of evidence of other crimes or bad acts that arise out of the same transaction or occurrence underlying the offense or offenses for which a defendant is being tried. *Odum*, 412 Md. at 611-12. In *Odum*, the defendant was charged with armed robbery, carjacking, kidnapping, and the murders of Michael Patten and Lee Ann Brown. Odum was acquitted by a jury on all counts except two counts of kidnapping. On appeal, a new trial was ordered. At the retrial, the State presented, over objection, the facts constituting the crimes of which Odum was acquitted at the first trial. Odum appealed, challenging the admission of the "other crimes" evidence.

In reviewing Odum's appeal, the Court of Appeals did not view each crime in isolation; rather, the Court placed them in context stating: "evidence of the robberies that precipitated the kidnappings, the carjacking that facilitated the kidnappings, the murders that brought a tragic close to the kidnappings, and the subsequent use of the proceeds of the robbery to purchase drugs, arose out of the same criminal episode." *Odum*, 412 Md. at 613. The Court further stated that kidnapping is a continuing offense. *Id*. Ultimately, the

Court held that the "other crimes" were so intrinsically related to the kidnapping offense that Rule 5-404(b) did not apply:

> In sum, the robbery, carjacking, murders, and subsequent use of the proceeds of the crimes were all intrinsic to the kidnappings. Those crimes were so connected or blended in point of time or circumstances with the kidnappings that they formed one transaction; moreover, the kidnappings could not be fully shown or explained without evidence of the other crimes. Therefore, admissibility of evidence of those crimes was not governed by Rule 5-404(b).

Odum, 412 Md. at 614.

Similarly, the arson and conspiracy to commit arson were all intrinsic to the fraud and false statement. Those crimes were connected in point of time and circumstance with the fraud related charges that these charges could not be adequately explained without the evidence of the crimes that occurred in Virginia. The court properly exercised its discretion.

III.

Finally, appellant contends that the court erred in excluding evidence that the insurer paid his claim. The State responds that the court properly exercised its discretion. We agree.

Prior to trial, the State moved *in limine* to exclude evidence that Progressive Insurance paid appellant's claim after appellant filed a demand letter and threatened to sue the insurer. Appellant responded that the insurer's response was relevant to the charge of making a false claim to an insurer. Specifically, appellant argued:

> [I]f the State is going to put on a mountain of Progressive records, which I believe they are going to do, showing as to what was made . . . what claims were made upon Progressive, and what was allegedly fraudulent, for the sake

> of completeness, they should be allowed to see the complete record, in terms of what was the response to that, and how Progressive replied to that.

The State responded that the fact that Progressive paid appellant's claim "doesn't make it more or less likely that he actually committed the insurance fraud. In fact, it would just open up to a mini-trial in here about why they made such a decision."

The court granted the State's motion to exclude, agreeing that the insurer's decision to pay the claim was not relevant:

> Again, especially in light of the proffer that the claims adjustor, you know, paid it because they made a cost/benefit analysis, and they may be able to go after Mr. Turner in the future, I don't know. You know, if something were to happen, they could maybe try to recoup that, I don't know. But I do think that that should be excluded at this point. I don't believe, you know, excluding that deprives the Defense of his right to a full defense.

"'[T]rial judges do not have discretion to admit irrelevant evidence.'" *Fuentes v. State*, 454 Md. 296, 325 (2017) (quoting *State v. Simms*, 420 Md. 705, 724 (2011)). "'[T]he determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court.'" *Id*. (quoting *DeLeon v. State*, 407 Md. 16, 20 (2008)). A trial court's weighing of the probative value of the evidence against its harmful effects, however, is subject to the more deferential abuse of discretion standard. *Id*. at 326 n. 13. "Generally, in order for evidence to be admissible, it must be relevant." *Thomas v. State*, 429 Md. 85, 95 (2012). "Pursuant to Md. Rule 5-401, evidence is relevant if it has '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.'" *Id.* at 96.

In civil cases, Maryland Rule 5-408 provides:

> (a) The following evidence is not admissible to prove the validity, invalidity, or amount of a civil claim in dispute:
>
> (1) Furnishing or offering or promising to furnish a valuable consideration for the purpose of compromising or attempting to compromise the claim or any other claim;
>
> (2) Accepting or offering to accept such consideration for that purpose; and
>
> (3) Conduct or statements made in compromise negotiations or mediation.

Maryland Rule 5-408 also includes the following provision, applicable in criminal cases such as this one:

> (d) When an act giving rise to criminal liability would also result in civil liability, evidence that would be inadmissible in a civil action is also inadmissible in a criminal action based on that act.

"The purpose of Rule 5-408 is to encourage the settlement of lawsuits by ensuring that parties need not fear that their desire to settle pending litigation and their offers to do so will be construed as admissions." *Bittinger v. CSX Transp. Inc*., 176 Md. App. 262, 276–77, *cert. denied*, 402 Md. 356 (2007) (citation omitted). "[S]ettlement agreements are not evidence or admissions of fault." *Bd. of Trustees, Cmty. Coll. of Baltimore Cty. v. Patient First Corp*., 444 Md. 452, 479 (2015). "[P]arties settle cases for many reasons unrelated to the liability question and more often than not, in the settlement agreements, expressly state that the agreement is not an admission of liability." *Hosmane v. Seley-Radtke*, 227 Md. App. 11, 32 n. 8, *aff'd*, 450 Md. 468 (2016).

We are persuaded that any evidence that Progressive Insurance ultimately paid appellant on his claim was not relevant in this case. Accordingly, we conclude that the court properly exercised its discretion in excluding the evidence.

JUDGMENTS AFFIRMED.

COSTS ASSESSED TO APPELLANT.