

Circuit Court for Worcester County
Case No. C-23-CR-21-000272

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2264

September Term, 2023

QUAIRE T. JOHNSON

v.

STATE OF MARYLAND

Wells, C.J.,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 2, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal arises from Appellant Quaire T. Johnson’s (“Johnson”) August 2023 conviction for possession with intent to distribute a fake controlled dangerous substance; possession of a controlled dangerous substance; possession of a firearm during a drug trafficking crime; and possession of a firearm by a prohibited person. During the trial, State’s witness, Detective Gemerek, testified that, at the time of his arrest, Johnson told him that he had handled the firearm in question three weeks earlier at a gun range. Defense counsel objected on the grounds that this testimony constituted inadmissible evidence of prior bad acts. The court overruled the objection, and the jury ultimately convicted him on all counts. On appeal, Johnson presents one question for our consideration that we rephrase as follows:¹

Whether the court erred by admitting Detective Gemerek’s testimony related to Johnson’s prior handling of the firearm found in the vehicle.

For the reasons herein, we answer in the negative and affirm.

FACTS AND PROCEDURAL HISTORY

On May 23, 2021, Johnson was riding in a silver Chevy Malibu with three other passengers. The vehicle belonged to the mother of Johnson’s child. According to

¹ Appellant presented his question as follows:

Whether the trial court committed error when it overruled Defense Counsel’s objection, which was made on 5-404(b) grounds, that the following testimony from Detective Gemerek was inadmissible: *that Johnson had told him, during the traffic stop, that he had handled the AK-style firearm at a gun range in Delaware three weeks earlier?*

Johnson’s testimony, he was living out of the vehicle at the time. At 3:51 a.m., Sergeant Mark Powell of the Worcester County Sheriff’s Office conducted a traffic stop on the vehicle. Johnson was in the front passenger’s seat. During the stop, Sergeant Powell detected the odor of marijuana. Additional officers arrived on the scene and searched the vehicle. Deputy Julianne O’Toole testified that when she searched the trunk of the car, she found a black backpack containing a firearm, firearm magazines, and various ammunition located throughout the inner and outer compartments of the backpack. In the rear outside compartment of the backpack Officer O’Toole found a brown paper bag with 233 wax folds containing Tramadol (a schedule IV controlled substance), Xylazine, and a non-controlled animal tranquilizer.² At the time of his arrest, Johnson told police that the drugs found in the car belonged to him. He identified the firearm as belonging to his brother and told police he had not known it was in the backpack at the time.

Following his arrest, Johnson was charged with possession with intent to distribute a fake controlled dangerous substance; possession of a controlled dangerous substance; possession of a firearm during a drug trafficking crime; possession of a firearm by a prohibited person; illegal possession of a regulated firearm; and possessing a loaded handgun inside a vehicle.³

² At the time of the stop and before lab testing, officers identified these substances as heroin/fentanyl.

³ The last two charges were disposed of before the taking of the verdict.

At trial, Detective Corey Gemerek testified that he had spoken to Johnson during the traffic stop. During his conversation, Detective Gemerek learned that Johnson had traveled from Dover, Delaware to Ocean City where he had spent the day. At the time of the stop, Johnson and the other passengers were on their way back to Delaware. Johnson told the detective that just before leaving for Ocean City he had placed the bag of drugs into the outer compartment of the backpack that was in the trunk. The State then asked Detective Gemerek about his conversation with Johnson regarding the firearm.

[STATE]: Okay. Did you ask him if he knew his brother had a firearm?

[WITNESS]: I did. And he said that he was aware that his brother had a firearm. He had handled -- Quaire Johnson had handled that firearm three weeks prior at a gun range back in the Delaware area.

Defense counsel objected and the following exchange occurred at the bench:

[DEFENSE]: This is in reference to our chambers discussion. I think that argument that I'm going to make is that this is prior bad acts evidence. The State has or will attempt to indicate that my client is a prohibited person. Specifically the allegation that he is shooting a firearm is a crime, a crime in the State of Delaware, for a felony crime in the State of Maryland, or wherever that shooting at the range is, so long as it's as I understand it . . .

[DEFENSE]: So I understand the State's desire or intention in trying to tie my client in some way, shape or form to that firearm. However, it is prior bad acts evidence. It is extremely prejudicial, I think more so than the probative value. And I would ask the Court to exclude it, strike it and give a curative instruction.

[COURT]: Well, your objection is overruled. The Court finds that a critical question for the jury is going to be knowledge of the gun, some relationship or some basis for establishing that he has knowledge of the gun in the vehicle that he was traveling in. And while it may be prejudicial, it's not unfairly prejudicial, and I find its probative value is considerable under these circumstances. The backpack is in the trunk of the vehicle. And so there's an argument that could be made I'm certain by yourself that it wasn't Mr. Johnson's firearm and that he had no knowledge of it. So this line of questioning and the answer that's already been solicited or elicited is appropriate under the circumstances.

At the close of the trial Johnson was convicted on all counts. This timely appeal followed.

DISCUSSION

On appeal, Johnson argues that the court erred in admitting Detective Gemerek's testimony regarding his use of the firearm for two reasons. First, Johnson contends that the court failed to make a determination that evidence of his prior bad act was admissible based on an exception pursuant to Maryland Rule 5-404(b). Second, Johnson argues that, even if an exception applied, the testimony was inadmissible because it was not probative to the State's case and caused substantial prejudice to Johnson. We disagree and hold that the court properly considered the testimony's special relevance to the State's case as well as its probative value compared to any prejudice it might cause Johnson.

Evidence of prior bad acts is generally not admissible at trial "to prove that [the defendant] is guilty of the offense for which he is on trial." *State v. Faulkner*, 314 Md. 630, 633 (1989). This is because prior bad acts evidence "may tend to confuse the jurors,

predispose them to a belief in the defendant’s guilt, or prejudice their minds against the defendant.” *Id.* “Evidence of other crimes 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 crime or his character as a criminal.” *Id.* at 634. This “initial hurdle” means “not simply that the ‘other crimes’ evidence be technically or minimally relevant to some formal issue in the case other than criminal propensity, but further (1) that the relevance be *substantial* and further still (2) that it be with respect to a *genuinely contested issue* in the case.” *Emory v. State*, 101 Md. App. 585, 626 (1994) (emphasis in original).

Specifically, evidence of other crimes or bad acts is admissible to demonstrate “proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.” *Burris v. State*, 435 Md. 370, 386 (2013) (quoting Maryland Rule 5-404(b)). The exceptions listed, however, are not exhaustive and there is inevitably overlap. “The label we put on an exception, therefore, is not that important, just so long as the evidence of ‘other crimes’ possesses a special or heightened relevance and has the inculpatory potential to prove something other than that the defendant was a ‘bad man.’” *Page v. State*, 222 Md. App. 648, 663 (2015).

For “other crimes” evidence to be admissible, the trial court must conduct a threefold determination. First, the trial court must find the evidence “has special relevance,” that is, that the evidence “is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character[.]” *Harris v. State*, 324 Md.

490, 500 (1991). This is a legal determination and does not involve any exercise of discretion. *Faulkner*, 314 Md. at 634. Second, the trial court must determine that the accused’s involvement in the other crimes is established by clear and convincing evidence. We review the trial court’s determination applying the clearly erroneous standard. *Id.* at 634-35. Third, and lastly, the trial court must weigh the necessity for the probative value of the evidence against its “potential for unfair prejudice[.]” *Harris*, 324 Md. at 500. This part of the analysis we review for abuse of discretion. *Faulkner*, 314 Md. at 635. Unfair prejudice involves more than damage to a party’s case. *Weiner v. State*, 55 Md. App. 548, 555 (1983). Rather, it means “an undue tendency to persuade the jury to decide the case on an improper basis, usually an emotional one.” *Id.*

Here, the court properly determined that Detective Gemerek’s testimony was substantially relevant to a contested issue in the case. The court specified that “a critical question for the jury is going to be knowledge of the gun, some relationship or basis for establishing that he has knowledge of the gun in the vehicle that he was traveling in.” Indeed, because the gun was found in the trunk of the Chevy Malibu, the State’s theory of Johnson’s possession was constructive possession. To prove constructive possession, it was essential for the State to adduce circumstantial evidence of Johnson’s knowledge of and intent to exercise dominion and control over the gun. *Mosley v. State*, 245 Md. App. 491, 504 (2020) (“The absence of knowledge of the presence of contraband would clearly foreclose the existence of constructive possession.”); *Dawkins v. State*, 313 Md. 638, 649 (1988) (“[A]n individual ordinarily would not be deemed to exercise ‘dominion or control’

over an object about which he is unaware. Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control.”).

Under the circumstances of this case, therefore, the court was legally correct in concluding that the testimony held special relevance to the genuinely contested issue of Johnson’s knowledge of the gun’s presence in the vehicle. Johnson told police that the gun belonged to his brother but that he was unaware that it was in the backpack when he placed the drugs into the same backpack and left for Ocean City. The fact that Johnson had handled the same gun at a gun range within weeks of the traffic stop is relevant to show not only that Johnson was familiar with the weapon and had access to it prior to the traffic stop, but also that Johnson was familiar with how the weapon and ammunition were transported. Because Johnson admitted to handling the backpack to place the drugs inside, this evidence tends to make it more probable that Johnson had knowledge of the weapon’s presence in the backpack on the day in question.

Moreover, the jury could infer that, because Johnson had access to the gun weeks before the incident, he also had access to it in this instance. We have held that evidence of prior possession or access to contraband is relevant to whether a defendant had access to such contraband at the time of the offense at issue. *See, e.g., Francois v. State*, 259 Md. App. 513, 530 (2023). In such instances, as is the case here, evidence of prior possession or access to a gun is not admitted to show that the defendant was more likely to have committed the crime at issue, but instead is relevant for the non-propensity purpose of establishing possession at the time of the offense charged. *Id.* (finding that evidence of

text messages sent by the defendant discussing various firearms and shooting them at a gun range “was not admitted to show that” the defendant “was a general scofflaw and therefore more likely to engage in the misconduct of which he was accused,” but was instead “admitted to corroborate or bolster” circumstantial evidence “that on a specific date and place, he possessed a handgun”). The court, therefore, properly determined that the testimony was admissible pursuant to a Maryland Rule 5-404(b) exception.

Next, although the court did not explicitly make a finding that the evidence presented was supported by clear and convincing evidence, “the action of a trial court is presumed to have been correct and the burden of rebutting that presumption is on the party claiming error first to allege some error and then to persuade us that that error occurred.” *State v. Chaney*, 375 Md. 168, 184 (2003). Here, we conclude that the court took into account the credibility of Detective Gemerek’s testimony when ruling on the objection and found it to be so supported. Further, although on cross-examination later in the trial Johnson denied making this statement, defense counsel did not argue at the time of its objection or on appeal that the evidence was unsupported. We therefore hold that the trial court properly considered this factor.

Finally, the trial court properly balanced the probative value of Johnson’s statement with the potential for unfair prejudice. As the court stated,

[W]hile it may be prejudicial, it’s not unfairly prejudicial, and I find its probative value is considerable under these circumstances. The backpack is in the trunk of the vehicle. And so there’s an argument that could be made I’m certain by yourself that it wasn’t Mr. Johnson’s firearm and that he had

no knowledge of it. So this line of questioning and the answer that's already been solicited or elicited is appropriate under the circumstances.

In so ruling, the court recognized that given the specific facts of this case, evidence that connected Johnson to the firearm in some way would be especially probative to the State's case that he had knowledge of the weapon's presence in the vehicle. The court acknowledged that it may be somewhat prejudicial, but that such prejudice was not unfair and did not substantially outweigh the probative value of the evidence in this case. There is no indication that the State introduced this evidence for the purpose of showing Johnson's propensity to commit the crimes alleged and no indication that inclusion of this evidence would lead the jury to decide the case on an improper basis. We conclude, therefore, that the court did not abuse its discretion by finding that the probative value was not substantially outweighed by its prejudicial effect.

For the foregoing reasons, we hold that the court did not err in admitting Detective Gemerek's testimony related to Johnson's prior access to the firearm found inside the vehicle. We, therefore, affirm the judgment of the circuit court.

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