Circuit Court for Prince George's Co.
Case No. CT141412X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2696

September Term, 2015

ABDUL UMRANI

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 14, 2018

On October 7, 2015, a jury sitting in the Circuit Court for Prince George's County convicted appellant, Abdul Umrani, of second degree assault, fleeing and eluding police, and two counts of violation of a protective order.[1] The court sentenced appellant to ten years of active incarceration.[2] This appeal followed, wherein appellant presents the following questions for our review:

1. Did the trial court err and/or abuse its discretion when it denied [appellant's] motion to sever?

2. Did the trial court err and/or abuse its discretion when it permitted an officer to testify that [appellant] had an outstanding arrest warrant?

3. Did the trial court err when it overruled defense counsel's objection to the verdict sheet?

For the reasons discussed below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 16, 2014, Amaris Williams obtained a final protective order from the District Court of Maryland for Prince George's County against appellant, her estranged husband. Appellant, who was present in court, acknowledged receipt of the order, which was effective until July 16, 2015. On August 30, 2014, Williams was at her home at 7635

[1] Appellant was charged in a 196-count indictment, which encompassed offenses occurring over the course of six days. Appellant filed a motion to sever, which the court granted in part, severing the offenses into six separate trials by offense date. This case was the first case tried. The jury in this case found appellant not guilty of two separate first degree assault counts, a separate second degree assault count, and thirteen other violation of protective order counts.

[2] Appellant was sentenced to ten years of incarceration on the second degree assault, and suspended sentences on the fleeing and eluding police and violation of protective order counts. Each sentence was ordered to be served concurrently.

Allendale Drive in Landover when she received sixteen phone calls from a number she recognized as belonging to appellant. All but one of these phone calls went unanswered. Sarah Barton, a friend of Williams who was at the house that day, answered one of the phone calls. Appellant asked to speak with Williams, but Barton ended the call at Williams' request. Approximately four or five minutes after the phone call, Barton observed appellant drive up to the house in a tow truck, park at the curb, and approach Williams' front door. Appellant then knocked on the door and Barton opened it. Appellant asked Barton for Williams' whereabouts and she told him that she would go get Williams for him. Barton then shut the door and Williams called 911. Appellant waited for about four to five minutes and then left the residence.

Williams advised the 911 operator that appellant was seen leaving her home in a white tow truck with "ADC" written on the side. Sergeant Kevin Deck of the Prince George's County Sheriff's Office arrived and spoke to Williams and Barton after appellant left. After speaking to the two women, Sergeant Deck departed, and shortly thereafter, Williams and Barton left the house in Williams' vehicle. A short distance from Williams' home, the two women observed appellant driving the white tow truck. Appellant made eye contact with Williams as the two vehicles passed each other. Soon thereafter, appellant turned his vehicle around, whereupon Williams quickly turned onto a side street in an effort to lose appellant. Williams and Barton then saw appellant drive past their location.

Williams proceeded to call Sergeant Deck. Sergeant Deck, who was a short distance away, responded to Williams' home. Not observing appellant there, Sergeant Deck drove past the home and began searching for appellant's vehicle. Soon thereafter, Sergeant Deck

located appellant driving the white tow truck on Sheriff Road. Sergeant Deck, who was driving a marked sheriff's vehicle, then activated his emergency equipment, including his lights and sirens, in an effort to stop appellant's vehicle. After Sergeant Deck activated his emergency equipment, he saw appellant look in his rear-view mirror, increase his vehicle speed, and cross the double yellow line to go against traffic. At times, appellant swerved to miss oncoming traffic. Appellant did not stop his vehicle, and instead drove towards Washington, D.C.

During the pursuit, appellant's vehicle, which was directly in front of Sergeant Deck's vehicle, slowed down abruptly such that the back of the tow truck's tailgate lowered. Sergeant Deck slammed on his brakes, but was unable to avoid striking appellant's vehicle. Other cars were on the roadway during the chase and were forced to move out of the way of appellant's tow truck. Sergeant Deck called for assistance during the pursuit, resulting in two other police officers joining the chase. The pursuit continued onto Interstate 295, and at one point, appellant drove into oncoming traffic on an onramp. Other vehicles on the roadway were forced onto the grass so as to avoid a collision with appellant's vehicle. The pursuit ended when appellant's vehicle struck the marked police vehicle being driven by Corporal Daniel Hardester of the Prince George's County Sheriff's Office, who had come to assist Sergeant Deck. Appellant's vehicle struck a concrete pillar immediately after his collision with Corporal Hardester's vehicle. Appellant was apprehended shortly thereafter.

DISCUSSION

I. Severance

Appellant was charged in a 196-count indictment.[3] The charges covered events occurring on six separate dates from July 1, 2014, to August 30, 2014. Prior to trial, appellant filed a motion to sever multiple counts of the indictment and sought seven different trials. He sought five separate trials for events occurring on July 1st, July 3rd, August 25th, August 26th, and August 27th. Additionally, he sought two separate trials for the events of August 30th. At a motion's hearing prior to trial, the court severed the offenses into six separate trials by the date of the offense, but declined to sever the events of August 30, 2014, into two separate trials. On appeal, appellant claims that the court abused its discretion when it denied his motion to sever the events of August 30, 2014, into two trials.

A. Parties' Contentions

Appellant alleges that "the trial court erred and/or abused its discretion when it denied [appellant's] motion to sever." He argues that the charges related to the police chase should have been severed from the charges related to the violation of protective order because "evidence pertaining to the two sets of charges was not mutually admissible." The State

[3] Twenty six of those counts are relevant to this case. Appellant was charged with the following ten counts pertaining to his chase with Sergeant Deck and Corporal Hardester: two counts of first-degree assault, two counts of second degree assault, two counts of fleeing and eluding, two counts of theft, one count of malicious destruction of property, and one count of resisting arrest. The remaining eleven of the twenty-six charges pertained to the phone calls appellant made to his estranged wife, as well as his visit to her home, and consisted of sixteen counts of violating a protective order.

responds that appellant's claim is not preserved because, "to the extent that he made an argument below that the offenses were not mutually admissible, his argument was different than it is on appeal." The State further argues that, even if preserved, the "trial court properly determined that the two closely related events on August 30 were mutually admissible" and "properly exercised its discretion in determining that the significant interest in judicial economy outweighed any prejudice to [appellant]."

1. Preservation

We have recognized that "when an objector sets forth the specific grounds for his objection, although not requested by the court to do so, the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified." *Brecker v. State*, 304 Md. 36, 39–40 (1985). The State contends that appellant's claim on appeal (that evidence of the violation of protective order and the police pursuit are not mutually admissible) is not preserved because he argued in his motion to sever filed below that "he was entitled to severance because he would be prejudiced by a joint trial." We disagree. While appellant did argue that the prejudicial effect of trying all of the charges together was significant, he also argued generally that the evidence was not mutually admissible. We hold that this was sufficient to preserve his claim on appeal.

2. Severance

Severance is "absolutely mandated, as a matter of law, when the evidence with respect to the separate charges (or, presumably, with respect to separate defendants) would not be mutually admissible." *Solomon v. State,* 101 Md. App. 331, 340 (1994). The trial court "undertakes a two-step process when severance is framed as a question of mutual

admissibility, and we review the process for abuse of discretion." *Garcia-Perlera v. State*, 197 Md. App. 534, 548 (2011). The court must first "determine whether the evidence from the 'other crimes' would be admissible if the trials occurred separately, taking into account the danger of unfair prejudice and other concerns under the usual evidentiary inquiry of Rule 5–403." *Id.* Second, "if the evidence is deemed mutually admissible, then 'any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.'" *Id.* (quoting *Conyers v. State*, 345 Md. 525, 554–56 (1997)).

"As long as the evidence bearing directly on one charge also has some relevance in proving the other charge, the evidence is, by definition, mutually admissible." *Wieland v. State*, 101 Md. App. 1, 15 (1994). "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." *State v. Faulkner*, 314 Md. 630, 634 (1986). Evidence of other crimes may be admitted "if it shows notice, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident. Other crimes evidence also may be admitted 'if the crimes are so linked together in point of time or circumstances that one cannot be fully shown without proving the other.'" *Wynn v. State*, 351 Md. 307, 316–17 (1998).

In the present case, appellant was spotted and chased by police a short time after his multiple attempts to contact Williams in violation of the protective order. So close in time were the two events that appellant was still in Williams' neighborhood when first observed by police. Upon the request of the State, the jury was given the instruction on flight to

prove consciousness of guilt. Evidence of appellant's flight from police was relevant to show that he knew that he was in violation of the protective order when he attempted to contact Williams. Evidence of the protective order violations preceding the police chase was relevant to show that appellant was consciously and purposefully attempting to evade apprehension by the police, and that he had a motive to flee. Evidence of the violation of protective order and the police pursuit were mutually admissible, because they were "substantially relevant to some contested issue in the case" and "not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *Faulkner*, 314 Md. at 634.

"Once a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder." *Conyers*, 345 Md. at 556. Here, consideration of judicial economy weighs greatly in favor of trying the events of August 30, 2014 together. The State's initial case had previously been severed into six different trials. Considering the "time and resources of both the court and the witnesses" weighs heavily in favor of joining the events of August 30th. *Cortez v. State*, 220 Md. App. 688, 694 (2014). In light of the foregoing, we hold that the court did not abuse its discretion in denying appellant's motion to sever.

II. Arrest Warrant Testimony and Prior Bad Acts Evidence

A. Parties' Contentions

Appellant argues that "the trial court erred and/or abused its discretion when it overruled defense counsel's objection and permitted the State to elicit testimony that

[appellant] had an outstanding arrest warrant at the time of this incident, when such testimony amounted to inadmissible prior bad acts evidence."

The State responds that the "trial court considered and determined that evidence of the outstanding arrest warrant was substantially relevant for a purpose other than to show propensity and that the probative value of the evidence was not substantially outweighed by the risk of unfair prejudice." For the following reasons, we hold that although the trial court erred, it committed harmless error when it admitted evidence of appellant's outstanding warrant.

B. Standard of Review

> We have often addressed the admissibility of "other crimes" evidence. Generally, "evidence of a defendant's prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial." Evidence of other crimes may tend to confuse the jurors, predispose them to a belief in the defendant's guilt, or prejudice their minds against the defendant. 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.

State v. Faulkner, 314 Md. 630, 633 (1989) (internal citations and quotations omitted).

> [T]he admission of evidence is committed to the considerable and sound discretion of the trial court. Furthermore, all relevant evidence, *i.e.*, evidence that tends to establish or refute a fact at issue in the case, is generally admissible. *See* Maryland Rule 5–402. Even relevant evidence, however, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *See* Maryland Rule 5–403. The trial court's relevancy determination, as well as its decision to admit relevant evidence over an objection that the evidence is

> unfairly prejudicial, will not be reversed absent an abuse of discretion.

Collins v. State, 164 Md.App. 582, 608-09 (2005) (internal citations omitted).

C. Analysis

Prior to the start of trial, the State advised the court that it sought to introduce testimony that the officers were aware of outstanding warrants for appellant at the time of the police chase, arguing that the testimony was "relevant both to why the officers pursued any chase of [appellant], as well as to the counts of resisting arrest." Defense counsel then made a motion *in limine* "to exclude the State from eliciting testimony from the officers that there were active warrants for [appellant's] arrest." The court granted the motion "to the extent of multiple warrants." Defense counsel then made the following comments during his opening statement to the jury:

> This is a case where the police did something that they didn't need to do, that they escalated a situation and took it from something very small to something giant.
>
> And they want you to blame [appellant] for the things that they did to him. And the response to that should be from us, well, this is what was going to happen when you did these things to [appellant].
>
> * * *
>
> But the mere fact that [appellant] didn't stop right away does not mean that this needed to be escalated. It doesn't justify the fear that [appellant] may have been in while being chased by numerous police in this case.
>
> And it doesn't justify the fact that the police now, after this damage has occurred to their cars, want to come back and change this and say well, this is actually how it happened,

> because we know that we did something that we shouldn't have done in the first place.

During the direct examination of Sergeant Deck, the State requested to approach the bench, and the following exchange occurred:

> [THE STATE]: I believe – I know Your Honor originally ruled he could only state that there was the existence of one warrant; however, based on defense counsel's opening, I do believe he's opened the door to explain that he knew at that time that there were –
>
> THE COURT: You lost me. Opened the door in what way?
>
> [THE STATE]: I'm sorry. Because, in opening argument –
>
> THE COURT: It's not evidence.
>
> [THE STATE]: I understand, but the defense was stating that the police did not need to engage in this chase, and they took a minor incident and kind of went into a chase.
>
> However, what has not been permitted to be put before the jury is that, it was an ongoing incident, that there were multiple warrants out for his arrest involving the same victim. So I do think –
>
> THE COURT: Involving who?
>
> [THE STATE]: The same victim. So I do think that this is relevant at that point to show why it was important to these officers to apprehend this defendant and why they engaged in this chase.
>
> THE COURT: I mean, the furthest you can go is, you may elicit testimony that in addition to this, there may have been – that there was an open warrant.

The State then continued its direct examination of Sergeant Deck, whereupon the following exchange occurred:

[THE STATE]: And is it also fair to say at the time, you were aware that separate from the potential violation of a protective order, you were also –

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Basis?

[DEFENSE COUNSEL]: May we approach again?

THE COURT: All righty.

(Counsel approached the bench and the following ensued:)

[DEFENSE COUNSEL]: Your Honor, this goes into a prior bad act. If they're going to say that there was a warrant separate –

THE COURT: You may lead him specifically on the question of whether or not there was another warrant. I don't want this witness engaging in broken field running which may subvert this whole enterprise.

Sergeant Deck then testified that at the time of the pursuit, he was aware that there was an arrest warrant out for appellant.

The trial court erred in permitting evidence of appellant's prior bad acts to be admitted, however, any error was harmless. Pursuant to Maryland Rule 5-404(b) "[e]vidence of other crimes, wrongs, or acts… is not admissible to prove the character of a person in order to show action in conformity therewith." "Such evidence is known as evidence of 'prior bad acts.' We have defined prior bad acts evidence as "an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Gutierrez v. State,*

423 Md. 476, 489 (2011) (internal citations omitted). The Court of Appeals has explained that

> [t]he rationale underlying the exclusion of other crimes evidence is that a jury, confronted with evidence that a defendant committed another crime, may utilize improperly the evidence to conclude that the defendant is a 'bad person' and, therefore, should be convicted of the charges for which he is on trial.

Wynn, 351 Md. at 317.

"The introduction of evidence which shows other offenses by the accused should be subjected to rigid scrutiny by the courts because of the great potential for danger which characterizes it." *Ross v. State,* 276 Md. 664, 671 (1976). However, evidence of a defendant's prior bad acts may be admissible for purposes "such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5–404(b). In *State v. Faulkner,* 314 Md. 630 (1989), the Court of Appeals articulated a three-part test that established when a trial court may admit evidence of a defendant's prior acts. First, the evidence must be "substantially relevant to some contested issue in the case and… not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989). Second, "the evidence proffered to the trial judge must be clear and convincing in establishing the accused's involvement in the other crimes." *Id.* Finally, the trial court must weigh the "necessity for and the probative value of the 'other crimes' evidence . . . against any undue prejudice likely to result from its admission." *Id.* at 635 (quoting *Cross v. State*, 282 Md. 468, 474 (1978)).

Applying the first prong of the test, we find that evidence of appellant's outstanding warrant was not substantially relevant to some contested issue in the case. The State argues that evidence of appellant's outstanding warrant was relevant for non-propensity purposes because the warrant constituted "irrefutable evidence that the officers had probable cause to arrest [appellant], an element of the offense of resisting arrest."[4] We disagree. Evidence of appellant's outstanding warrant was not relevant to the charges, specifically the fleeing and eluding police charge,[5] for which he was on trial. At issue here was appellant's violation of the protective order and his resulting actions, therefrom. Because outstanding warrants by their very nature imply that a defendant has in some way avoided his own arrest, any relevance for admitting appellant's outstanding warrants would be to show that appellant has previously avoided arrest and was committing the same behavior in the present case—in other words, it would be propensity evidence. This is exactly what Md. Rule 5-404 forbids.

Furthermore, the State's contention that evidence of appellant's outstanding warrant provided probable cause for the officers to arrest appellant is without merit. Under MD. CODE ANN., FAM. LAW § 4-509 (2014) , a person who fails to comply with the terms of an interim, temporary, or final protective order is guilty of a misdemeanor and subject to a fine, imprisonment or both. "An officer shall arrest with or without a warrant and take into

[4] "The elements of the [resisting arrest] crime that the State must prove are that: (1) a law enforcement officer arrested or attempted to arrest the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force." *DeGrange v. State,* 221 Md.App. 415, 421 (2015).

[5] The state nolle prossed the resisting arrest charge against appellant.

custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation." *Id.* Sergeant Deck, a Sergeant of the Domestic Violence Unit in the Prince George's County Sheriff's Office, was informed that appellant was in violation of the protective order. Sergeant Deck responded to appellant's estranged wife's, Williams', residence after receiving a call about appellant being at Williams' home. After having a conversation with Williams, Sergeant Deck filled out a domestic violence supplemental report, asked her questions, and notified his squad to report to the area. Approximately ten minutes after Sergeant Deck left Williams' home, he received a call from her to return to the area because appellant was still near the residence. After a short drive around the neighborhood, Sergeant Deck spotted appellant in his tow truck and began pursuing him. The circumstances surrounding appellant's violation of the protective order, which subsequently caused Sergeant Deck to respond to Williams' home already established sufficient probable cause to arrest appellant, not the evidence of appellant's outstanding warrants, as articulated by the State. Accordingly, we need not go further into the *Faulkner* analysis because the first prong, evidence that appellant's outstanding warrant was substantially relevant to some contested issue in the case and not offered to show propensity, has not been satisfied. The trial court should have excluded evidence of appellant's outstanding warrant.

However, the court's failure to exclude such evidence was harmless, and thus provide no grounds for reversal. "A defendant in a criminal case is entitled to a fair trial, but not necessarily a perfect one." *Gutierrez*, 423 Md. at 499 (*citing Hook v. State*, 315 Md. 25, 36 (1989). An error is harmless if "a reviewing court, upon its own independent

review of the record, is able to declare a belief beyond a reasonable doubt that the error in no way influence[d] the verdict." *Gutierrez*, 423 Md. at 500. To make a harmless error determination, the reviewing court must be certain that "there is no reasonable possibility that the error complained of…may have contributed to the rendition of a guilty verdict." *Id.* In the case at bar, Sergeant Deck testified to the following against appellant: that appellant violated the protective order when he came near his estranged wife's residence; Sergeant Deck received a phone call about appellant from Williams and called his squad to report to her residence; Sergeant Deck returned closer to Williams' home because of appellant's actions; that after spotting appellant in his tow truck, Sergeant Deck pulled in behind appellant in his marked police vehicle and upon activating his lights and sirens, appellant looked in his rearview mirror, stepped on the gas, crossed the double yellow line, heading against traffic towards the D.C. line and led the officer on a police chase; another deputy in his own marked police vehicle was hit head-on by appellant; that upon crossing the D.C. line, both Sergeant Deck's and appellant's vehicles collided, then at some point, appellant slammed on his brakes, lowered the tow truck tailgate to go through Sergeant Deck's windshield.

Appellant's estranged wife, Williams, also testified that on the day in question, appellant unexpectedly arrived at her front door and subsequently entered her home. Prior to his arrival, appellant called Williams repeatedly. Upon appellant's entry into the home, Williams entered the kitchen where she called the police and informed them that she had a restraining order against appellant but that he was at her residence at that time. Williams later left her home in her vehicle and while driving, she spotted appellant driving in the

opposite direction. Upon locking eyes with one another, appellant made a U-turn to begin following Williams before she turned out of appellant's sight. It was this insurmountable evidence that led the officers to react the way they did and what led the jury to convict appellant of the charges against him. The trial court's decision to permit evidence of one outstanding arrest warrant did very little, if anything at all, to sway the jury in rendering its guilty verdict. As such, the trial court's error was harmless.

We next move on to appellant's contention that reversal is required because of the trial court's failure to articulate why it permitted evidence of appellant's prior bad acts, on the record. Citing *Streater v. State*, 352 Md. 800, 810 (1999), appellant alleges that the trial court was required to state its reasons for admitting other crimes evidence on the record, and that the trial court's failure to do so in this case "may require reversal." We disagree that reversal is warranted here. While the *Streater* court did state that, "should the trial court allow the admission of other crimes evidence, it should state its reasons for doing so in the record so as to enable a reviewing court to assess whether Md. Rule 5–404(b), as interpreted through the case law, has been applied correctly," it did not conclude that failure to do so was in fact, reversible error. *Id.* Much like the *Streater* court, "[w]ithout having "spread on the record the reasons for [its] ruling on the challenge" to the admission to the evidence, our role on appeal is reduced to speculation as to the rationale for the trial court's admission of the evidence." *Id.* at 812 (internal citation omitted). Nevertheless, the *Streater* court stated that a court's failure to state why prior bad act evidence was admitted *may,* not must, require reversal. In the present case, the trial court made the following statements when the State sought to introduce evidence of appellant's outstanding warrants:

> I mean, the furthest you can go is, you may elicit testimony that in addition to this, there may have been – that there was an open warrant.
>
> ...
>
> You may lead him specifically on the question of whether or not there was another warrant. I don't want this witness engaging in broken field running which may subvert this whole enterprise.

The court articulated the extent to which evidence of appellant's bad acts could be admitted but failed to state the reasons why the court was allowing the evidence. We have already stated that in the present case, the open warrant evidence should not have been admitted, and as established in *Streater,* that admitting such evidence required the trial court to provide reasons for why the evidence was admitted. However, because we have concluded that the evidence should have been excluded, it follows that an on-the-record analysis would not have been necessary here. Put plainly, had the court not admitted the evidence, the court would not have needed to provide an on-the-record analysis. Thus, the trial court erred in admitting the evidence and erred when it failed to conduct an on-the-record analysis for why the evidence was being admitted. However, the improper inclusion of the evidence, which would logically require an on-the-record analysis, was harmless error, which does not warrant reversal. As such, the court's failure to provide an on-the-record analysis was also harmless error. The trial court was incorrect but its failure to do so did not impact the outcome of the case. Reversal is not appropriate here.

Lastly, we briefly address the State's contention that evidence of the open warrant was properly admitted because appellant's counsel opened the door to the evidence. In

opening statements, defense counsel argued that in pursuing appellant, the "police did something that they didn't need to do, that they escalated a situation."

> It is well settled that [a]ny competent evidence which explains, or is a direct reply to, or a contradiction of, material evidence *introduced by the accused*[6] may be produced by the prosecution in rebuttal. It is equally well settled that the State's case-in-chief may include "rebuttal" evidence to which the defense has "opened the door,"[7] either during opening statement[8], or through cross-examination of a State's witness.

Johnson v. State, 408 Md. 204, 226 (2009) (internal citations and quotations omitted) (emphasis added).

"While comments made in opening statements are not evidence under the principle enunciated in *Clark*[9], the general principles involved in allowing a party to meet fire with

[6] This concept falls under the rule against the introduction of "anticipatory rehabilitation" evidence. "Under this rule, unless the defendant's opening statement and/or *cross-examination* of a State's witness has "opened the door" to evidence that is relevant (and *now* admissible) for the purpose of either rehabilitation or rebuttal, the State is prohibited from introducing during its case-in-chief—and thereafter rebutting—such evidence in order to "bolster" that witness's testimony." *Johnson*, 408 Md. at 226-27 (2009).

[7] "[O]pening the door is simply a way of saying: My opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue…The "open door" doctrine is implicated when a party seeks to respond to the other party's evidence with either (1) evidence which is competent, or (2) evidence which is similar to the adversary's evidence which was ruled competent *over objection.*" *Clark v. State,* 332 Md. 77, 85-87 (1993) (internal citations and quotations omitted).

[8] "An opening statement should refer to facts that will be admissible in evidence." *Terry v. State*, 332 Md. 329, 337 (1993).

[9] "Evidence admitted under the "opening the door" doctrine is generally offered to meet "(1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection." *Terry v. State,* 332 Md. 329, 338 (1993) (citing *Clark v. State*, 332 Md. 77, 85 (1993)).

fire are applicable. This doctrine of expanded relevance[10] has its limits, however, as the remedy must be proportionate to the malady." *Martin v. State*, 364 Md. 692, 708 (2001) (citing *Terry v. State*, 332 Md. 329, 337-38 (1993)) (internal citations and quotations omitted). Ordinarily, the State should have been allowed to enter in evidence of why the officers engaged in their conduct to offset appellant's argument that the officers escalated the situation. However, the State had the opportunity to do just that by way of testimony from the sergeants involved in the police chase on the day in question, Williams, who informed the officers that there was a valid final protective order in place that appellant was violating, and testimony from Williams' friend, Barton, who was with Williams at the house, saw and spoke with appellant that day. The State had sufficient evidence and testimony to counter appellant's counsel's opening statement at trial. It is difficult to see how evidence of the outstanding warrant was used for anything other than to show propensity. Accordingly, the remedy was not proportionate to the malady. Appellant did not "open the door" to allow such propensity evidence to come in, however for the reasons aforementioned, the court's error in admitting evidence of the outstanding warrant against appellant was harmless.

III. Verdict Sheet

A. Parties' Contentions

Appellant's third contention is that the "trial court erred when it overruled defense counsel's objection to the verdict sheet." Appellant argues that because the verdict sheet

[10] "The "opening the door" doctrine is really a rule of expanded relevancy." *Clark v. State*, 332 Md. 77, 84 (1993)

permitted the jury to convict him of violating the protective order based on a telephone call generally—without specifying the particular telephone call on which the conviction was based—he was denied his right to a unanimous verdict. Williams testified that appellant had called her sixteen times, and the State introduced phone records showing that appellant had made more than sixteen calls to Williams on August 30, 2014. Appellant was convicted of count seven: Violation of Protective Order (Telephone to Amaris Williams). Appellant argues that because count seven on the verdict sheet did not specify the telephone call on which it was based**,** "some members of the jury might have concluded that [appellant] made the first of the calls appearing in the phone records, while still others might have concluded that [appellant] made the second of the calls, while still others might have concluded that [appellant] made the third of the calls."

The State contends that appellant's argument is not preserved because on appeal, appellant claims "that the verdict sheet should have specified a particular call in order to ensure that the jury's verdict was unanimous," whereas at trial, appellant argued "that the verdict sheet specify a particular phone call 'so we know what – when the jury says guilty or not guilty which indictment number it goes to.'" Notwithstanding the preservation issue, the State also argues that "the trial court properly exercised its discretion in declining to further specify which call pertained to which count." Additionally, they argue, "[e]ven if the court abused its discretion in denying [appellant's] request to modify the verdict sheet, any abuse is harmless beyond a reasonable doubt." We hold that the trial court did not abuse its discretion in overruling appellant's objection to the form of the verdict sheet.

B. Analysis

This court's decision in *Herring v. State*, 198 Md.App. 60 (2011), is instructive in first addressing the State's preservation argument. In *Herring*, this court stated:

> Maryland Rule 8–131(a) controls the scope of appellate review and provides in relevant part:
>
> Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.
>
> In *State v. Bell*, 334 Md. 178, 188, 638 A.2d 107 (1994), the Court of Appeals explained:
>
> It is clear from the plain language of Rule 8–131(a) that an appellate court's review of arguments not raised at the trial level is discretionary, not mandatory. The use of the word "ordinarily" clearly contemplates both those circumstances in which an appellate court will not review issues if they were not previously raised and those circumstances in which it will. [T]his discretion should be exercised in favor of review when the 'unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'

Id. at 83 (internal citations omitted).

We believe that appellant sufficiently raised his issue with the verdict sheet, namely that the sheet should have specified a particular call, at trial. But even if appellant did not, the aforementioned law governs our decision to render an opinion on the verdict sheet issue. We view the review of this issue as fundamental to assure the defendant a fair trial.

Counts eleven through twenty-six of the indictment charged appellant with violating the protective order against Williams on August 30, 2014. The indictment did not specify

the basis for the violations. However the basis for the violations were listed on the verdict sheet. Count six of the verdict sheet stated "Violation of Protective Order (Trespass at Amaris Williams Residence)." Counts seven through twenty-one stated "Violation of Protective Order (Telephone to Amaris Williams)." Before it was delivered to the jury, defense counsel took exception to the verdict sheet, requesting that "each of the counts specific to the phone calls reference a specific phone call so we know that – when the jury says guilty or not guilty which indictment number it goes to." The court noted the exception. The verdict sheet remained unaltered and was sent to the jury during their deliberations.

"The 'return' of a verdict by a jury has been comprised of three distinct procedures, each fulfilling a specific purpose." *Jones v. State*, 384 Md. 669, 682 (2005). "Those procedures are 1) the foreman's oral statement of the verdict, 2) polling the jury, and 3) hearkening the jury to its verdict." *Ogundipe v. State*, 191 Md. App. 370, 381 (2010) (citation omitted). "If the jury is unanimous, the verdict is perfected." *Id.* at 385. A "verdict sheet itself is a tool for the jury to utilize in deciding its verdict but it does not constitute the verdict." *Id.* at 381. However, there is no "rule of procedure concerning the form of verdict sheets." *Davis v. State*, 196 Md. App. 81, 112 (2010). We review a trial court's use of a particular form of verdict sheet for abuse of discretion.[11] *Id.* at 114.

[11] In *Herring v. State*, 198 Md.App. 60, 77 (2011), appellant's counsel objected to the verdict sheet by requesting the trial court renumber appellant's count 1 and count 4 charge to counts 1 and 2. Counsel believed the gap in numbers would allow the jury to infer that appellant had additional criminal charges not on the verdict sheet, thereby prejudicing the jury. The court overruled the objection. On appeal, this Court found that the trial court had not abused its discretion in prohibiting the verdict sheet from being

"[J]urors are generally presumed to follow the court's instructions," absent evidence to the contrary. *Donaldson v. State*, 200 Md. App. 581, 595 (2011) (citing *Dillard v. State*, 415 Md. 445, 465 (2010)).

> The verdict sheet provides a much more limited guide for the jury, while the instructions are the foremost guide for the jury. A verdict sheet does not typically recount the elements of the crimes charged, the burden of proof on the State, the role of the jury in weighing the evidence, or the myriad other topics addressed in the instructions. A verdict sheet guides a jury in navigating the charges that are before it, reminds the jury of the findings that must be made, and provides a mechanism for recording the jury's determination on each charge.

Davis v. State, 196 Md.App. 81, 113 (2010).

In the present case, the jury was provided the verdict sheet after the court administered detailed jury instructions. The court explained that the jurors would receive a copy of the instructions to take back with them during deliberations and explained the charges against appellant. The jury was also instructed that their verdict "must be unanimous." In administering the jury instructions, the trial court stated:

> The verdict must be the considered judgment of each of you. In order to reach a verdict all of you must agree. In other words, your verdict must be unanimous.
> …
>
> If you are not satisfied of the defendant's guilt to that extent, then reasonable doubt exists, and the defendant must be found not guilty. Your verdict must represent the considered judgment of each juror and must be unanimous. In other words, all 12 of you must agree.

renumbered. This Court found that the form of the verdict sheet, specifically the numbering of the counts, in no way prejudiced appellant and thus had no impact on appellant's trial.

The jury was further instructed that appellant was charged with "multiple counts of violating a protective order," and that they "must consider each charge separately and return a separate verdict for each charge." When the verdict was returned, the foreman orally stated the verdict, each juror was polled as to whether they agreed with the verdict—to which each individual juror responded in the affirmative—and finally, the jury hearkened to its verdict. It was upon the court's instruction that the jurors relied, deliberated, and unanimously found appellant not guilty on counts 8-21 for violating the protective order by telephone and guilty of only the count seven violation.

Moreover, there is no evidence whatsoever that the verdict was not unanimous, as appellant argues, because "the construction of the verdict sheet permitted the jury to convict [appellant] of count seven, even though all twelve jurors may not have agreed that [appellant] made a specific call." The evidence the jury heard was that appellant's phone number called Williams sixteen times on August 30, 2014. On only one of those occasions was the call picked up and answered. During that one call, Williams' friend, Barton, picked up the phone and identified appellant as the caller. Counts seven through twenty-one of the verdict sheet stated "Violation of Protective Order (Telephone to Amaris Williams)." The jury then found appellant guilty of just one count of violation of protective order based upon his telephone call to Williams. It is illogical to conclude that a rational juror would have found appellant guilty of one of the unanswered phone calls to Williams, but not guilty of placing the one phone call which was answered by Barton and that she testified was made by appellant. Had the jurors not agreed that appellant violated the protective order by telephone call, they would have found appellant not guilty on all charges relating

to the telephone calls. However, because the jury decided to uphold only count seven out of the 16 telephone call violation charges, it logically follows that they collectively agreed on that single count. We find no merit in appellant's argument that because the verdict sheet did not specify which exact phone call each count referred to, that the jurors did not agree on which call appellant was found guilty.

Lastly, appellant's argument that his right to a unanimous verdict under the Sixth Amendment and the Maryland Declaration of Rights was violated, is unfounded. When polled, all of the jury members agreed[12] to the verdict read by the foreperson. As such, the verdict was unanimous. Thus, there is no evidence that appellant was denied his right to a unanimous verdict.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[12] "In Maryland, for a verdict in a criminal case tried by jury to be final, the jury must intentionally render a unanimous verdict." *Caldwell v. State,* 164 Md. App. 612, 631 (2005).