

Circuit Court for Wicomico County
Case No. C-22-CR-18-000409

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 121

September Term, 2020

DREW SKYLER CARTER

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Ripken,

JJ.

Opinion by Nazarian, J.

Filed: January 19, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury found Drew Carter guilty of two counts of second-degree rape, one count of first-degree assault, one count of second-degree assault, one count of third-degree sex offense, and one count of reckless endangerment. The charges stemmed from an incident that occurred between Mr. Carter and his wife, V,¹ on June 19 and 20, 2018. Mr. Carter contends that at trial, the Circuit Court for Wicomico County erred in allowing evidence of Mr. Carter's prior bad acts into evidence. We disagree and affirm.

I. BACKGROUND

Mr. Carter was convicted of charges stemming from events that occurred between the evening of June 19, 2018 and June 20, 2018 at the home where Mr. Carter was living with V. The couple have two children in common who were staying with Mr. Carter's mother in Georgia at the time.

On the evening of June 19, Mr. Carter returned home from work earlier than usual. V testified that she had consumed several glasses of wine and that Mr. Carter drank tequila after he came home. She testified that he became angry after he learned of V's infidelity by finding a text message on her cell phone.

V testified that Mr. Carter confronted her and called her names, so she locked herself in their car to get away from him. Mr. Carter broke the car window and V fled into the house, hiding between their bed and the wall. Mr. Carter looked for her and eventually left with her cell phone.

Mr. Carter then began texting and calling Damian Molisani, the man who had sent

¹ To protect her privacy, we refer to the victim by her first initial.

the text message to V's phone. Mr. Molisani testified that he blocked the phone number Mr. Carter was using, but Mr. Carter continued to contact him from other phone numbers. Mr. Carter asked for Mr. Molisani's address because "[h]e wanted to fight," and Mr. Molisani complied. Mr. Carter arrived at Mr. Molisani's address around midnight in a sedan with a broken window. Mr. Molisani noted that Mr. Carter was stumbling and smelled of alcohol. The two did not fight, but Mr. Molisani answered Mr. Carter's questions and confirmed that he had engaged in sexual relations with V.

V testified that between three and four on the morning of the 20th, Mr. Carter returned. V had fallen asleep. Mr. Carter grabbed her by her arm and hair and dragged her into the living room. V testified that he pinned her to the ground on her stomach, told her "you like to have strange things in you," and put his fingers inside of her vagina and rectum at the same time. V testified that it was painful and she told him to stop. V eventually got away and locked herself in the bathroom, but Mr. Carter forced his way in. Mr. Carter pushed V into the bathtub and caused V to hit her head, and he threw items at her, including a shampoo bottle and a mason jar full of toothbrushes. She testified that she felt "very dizzy" after Mr. Carter placed pressure on her neck during the incident in the living room and that she "started seeing, like, stars" when she hit her head in the bathroom. V was able to escape, ran into the children's unoccupied bedroom, and hid beneath the bunk bed. Mr. Carter followed V and hit her with a steam cleaner and vacuum cleaner while she was under the bed. Mr. Carter eventually stopped, went into their bedroom, and fell asleep.

The following morning, Mr. Carter told V that he didn't want her there when he

returned home from work. When Mr. Carter left, V called 911. Officer Ted Collins responded. V initially did not tell police about the sexually assaultive behavior, but in response to his questions, she told him what happened. The police transported V to the hospital, where she underwent an examination. Charlese Smithson, the forensic nurse examiner, testified that V reported that Mr. Carter “inserted two or more fingers . . . in her vagina and . . . her rectum.” In its brief in this Court, the State summarized Ms. Smithson’s testimony about multiple bruises and abrasions on V’s body and injuries to V’s vagina and rectum:

Smithson took photographs and made a “body map” to document the injuries she perceived on [V] during the examination. Smithson noted petechia – “red[]broken blood vessels with a lump and painful to palpation” – on [V]’s right cheek and under her hair, consistent with “a blunt force trauma.” There was an “abrasion on her upper left back,” a “laceration on the right shoulder,” and an “abrasion on the right lower back.” There was a contusion and laceration on her right arm, a “large bruise to her right leg,” a “bruise to her inner left thigh,” “a bruise to her left arm,” “bruising to the left calf,” “bruising to her left shin,” and “bruising on her bilateral knees.”

Smithson also described “two reddened abrasions to her left labia minora,” “skin irritation on her right labia,” reddening and “bruising” to “the left inner butt cheek, a “laceration near the sphincter, and indicated, “you can actually see the split tissues” of the laceration, like I said, is a tear and a rip.” Smithson opined that the injuries were “consistent [with] something pulling or tearing toward the rectum or vagina which was consistent with [V]’s statement.”

(Brackets in original) (citations to transcript omitted). V testified that some of the injuries—the one on her shoulder and the bruise on her inner thigh—resulted from an incident earlier in the week, when Mr. Carter threw a recliner at her and kicked her with

his boot (more on that below).

Detective Brian Beaver testified that while speaking with V at the hospital, Mr. Carter texted her that he was leaving the state. Detective Beaver issued an alert, and Officer Matthew Connor testified that he was alerted to be on the lookout for Mr. Carter's vehicle. Officer Connor apprehended and arrested Mr. Carter shortly thereafter and testified that his vehicle appeared to have been "packed in a hurry."²

V testified that later she sent a text to Detective Beaver indicating that she "did consent to having sex with [Mr. Carter] because [she] knew he was angry about [Mr. Molisani] and [she] got angry when he got rough with [her]." At trial, V explained, "I had talked to [Mr. Carter] on the phone, and the sexual assault stuff came up. And pretty much, he doesn't want sex charges, and at that time, I still had an emotional attachment to him and I was willing to lie for him and say, oh, well, he didn't do it. He got rough with me."

Detective Beaver conducted a post-arrest interview with Mr. Carter and the transcript was admitted into evidence. Mr. Carter's version of events, as relayed to Detective Beaver, differed from V's account. He testified that "everything was just great" with V. He said that he went to the store to buy two beers and drank them. He claimed that he got into the car again to buy cigarettes but fell asleep and awoke to V smashing the car window before running into the bushes. He said that it was after that when he found the

² Officer Connor testified that PFC Richardson transported Mr. Carter to the Pocomoke City Police Department and placed him into a cell. PFC Richardson checked on Mr. Carter after five to ten minutes and saw "Mr. Carter on the bunk bed on his knees leap off with a belt tied around his neck." PFC Richardson cut Mr. Carter down and he later was transported to the hospital.

text message from Mr. Molisani on V's phone and then went to meet Mr. Molisani, returned home around 2:30 a.m., went into the house, locked all the windows and doors, and went to sleep. He claimed that V wasn't in the house when he went to sleep but that she woke him up in the morning and "she was scratched and bruised up like she had been through bushes or something. I never laid my hands on her or hit her with anything. Never."

Detective Beaver also asked him about the vaginal injuries. The State describes the exchange in its brief as Mr. Carter saying that they had sex before he left but denying that he assaulted her sexually:

When Detective Beaver asked about the vaginal injuries, Carter replied, "I have no clue," before adding, "[w]e had sex last night," "before I left. We did have sex." Detective Beaver followed, "she said you were shoving your fingers up there," and Carter insisted, "I didn't shove my fingers in her anus or nothing. I mean, we're married. I didn't do nothing to hurt her." Detective Beaver inquired, "[w]ell, how did she get hurt like that?" Carter replied, "[w]e were – had sexual relations. I don't know how she got hurt."

Mr. Carter also testified at trial, and his trial testimony differed from his recorded post-arrest interview. He testified that when he got home from work, he and V had drinks and played music. He testified that he was on the phone with his mother for "a good 45 minutes," and that V was "aggravated that [he] was spending a lot of time on the phone." He claimed that V approached him and "this may sound crazy, but um, she, she wanted to have sex. She did." He testified that he "hung up the phone . . . and [they] had sexual intercourse, uh, you know, other things involved with that."

He testified that at around 9:30 p.m., he got in the car to get cigarettes, but fell asleep

and woke up to V breaking the car window. Mr. Carter testified that he was upset about the window being broken, chased her into the house, and threw things around the house, saying to her “I can show you how to break things.” He admitted to throwing a shampoo bottle at her and said that she “stumbled backwards” into the bathtub. He testified that V also threw things at him. He said, “I was throwing a temper tantrum. It was very, uh, immature of me to do this, but I did it, unfortunately.” But although he admitted to throwing things at V, he denied that he intended to cause her bodily harm. He also denied that V crawled under the children’s bunk bed, and he denied that he tried to hit her with the vacuum—instead, he said that V threw a vacuum and he threw a steam cleaner, and broke it. He claimed that V ran outside, and then he discovered the text messages from Mr. Molisani. He said that after returning from Mr. Molisani’s address at around 2:30 a.m., he went inside and went to sleep.

On November 21, 2019, the State filed a motion *in limine* seeking to introduce evidence of Mr. Carter’s alleged prior assaults of V for the purpose of proving motive and intent. The circuit court made a preliminary ruling in favor of admissibility for the following three events:

First, V testified about an incident in 2015 when she and Mr. Carter lived in Georgia. V testified that she and Mr. Carter got into a fight after she came home from work one day. During the fight, he shoved his fingers inside her vagina and said, “I just wanted to see if you smelled like D-I-C-K.” V testified that “[i]t’s scary because he has never been, like, a sexual deviant, or, like, mean in that way. So it’s just strange that these two

incidents—I don’t know that person, because that’s definitely not the person that I married or grew up with.”

Second, V testified about an incident in March 2018. After hearing loud noises coming from their house, the neighbors called the police. Officers “saw [Mr. Carter] through a window assault [V]” and arrested him. But V hired an attorney for Mr. Carter, invoked spousal privilege, and the charges were dropped. She explained that she did so because she was financially dependent on Mr. Carter and had feelings for him.

Third, V testified that some of the bruising on her body discovered after the June 19–20 incident was the result of a separate altercation with Mr. Carter earlier in the week. She said she hid behind a recliner after Mr. Carter had become upset, but he “picked up the recliner and threw it, and that’s how I got the injury to my shoulder,” and then he “kicked me in my inner thigh with his boot and then on the top of my leg.”

Before opening statements, the court granted the defense a continuing objection to all evidence relating to prior bad acts. Right before Mr. Carter testified, defense counsel moved to strike the testimonial references to the prior bad acts and the trial court denied the motion. Defense counsel confirmed the continuing objection after the jury instructions.

Mr. Carter was tried by jury on December 3–5, 2019. The court acquitted him of false imprisonment and the jury found Mr. Carter guilty on the remaining charges. He was sentenced to twenty years for two counts of second-degree rape, to be served concurrently, twenty-five years for first-degree assault, suspending all but five years, and five years of supervised probation upon release. The court merged the sentence for the third-degree sex

offense with the sentence for second-degree rape and merged the sentences for second-degree assault and reckless endangerment with the sentence for first-degree assault.

Additional facts will be discussed as needed below.

II. DISCUSSION

On appeal, Mr. Carter contends that the circuit court erred in admitting evidence of the three prior incidents of Mr. Carter assaulting V.³ We hold that the circuit court did not err in admitting the evidence and affirm Mr. Carter’s convictions.

Maryland Rule 5-404(b) prohibits the admission of evidence of a defendant’s prior wrongs or bad acts if the evidence is offered to prove the defendant’s propensity to commit the crime with which they are charged:

Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. . . .

Other crimes evidence generally is excluded because it “may tend to confuse the jurors, predispose them to a belief in the defendant’s guilt, or prejudice their minds against the defendant.” *State v. Faulkner*, 314 Md. 630, 633 (1989). But there are exceptions to the general rule. To determine whether an exception applies, the court employs a three-part

³ Mr. Carter phrased his Question Presented as follows:

Did the trial court err in allowing the jury to consider unfairly prejudicial propensity evidence?

The State phrased its Question Presented as follows:

Did the trial court soundly exercise its discretion by admitting evidence regarding prior assaults involving Carter and the victim?

framework. *Id.* at 634. *First*, the court determines whether the evidence of a prior wrong or bad act has some “special relevance, i.e., [.] is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character.” *Hurst v. State*, 400 Md. 397, 407–08 (2007) (quoting *Harris v. State*, 324 Md. 490, 500 (1991)). The Rule specifies that evidence of prior bad acts may have special relevance if it is offered to prove “motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident”⁴ Md. Rule 5-404(b). *Second*, the proponent must establish by clear and convincing evidence that the prior act occurred. *Faulkner*, 314 Md. at 634. And *third*, the probative value of the prior act must outweigh the danger of unfair prejudice substantially. *Id.*

Mr. Carter challenges the trial court’s determinations on the first and third steps of the framework only. We review *de novo* the trial court’s decision on the purely legal question of whether the proffered evidence has the required “special relevance,” *i.e.*, whether it falls into an exception to the general rule that prior wrongs and bad acts are inadmissible. *Id.* at 634. We review for abuse of discretion the court’s determination, at the third stage, whether admitting the testimony would be unfairly prejudicial. *Id.*

⁴ There are also judicially-recognized exceptions, including “[w]here the ‘other crime’ tends to show a passion or propensity for illicit sexual relations with the particular person concerned in the crime on trial.” *Oesby v. State*, 142 Md. App. 144, 161 (2002) (quoting *Solomon v. State*, 101 Md. App. 331, 354–55 (1994)). The State argues that this exception would allow the admission of the testimony about the 2015 sexually assaultive incident. But because that argument was not raised or addressed in the circuit court, we decline to consider it here.

At the hearing on the State’s motion *in limine*, the State argued that evidence of the three incidents was specially relevant because it tended to prove motive and intent by demonstrating “the cycle of violence and control, which is typically in their relationship triggered by jealousy.” Mr. Carter argued that the incidents didn’t tend to prove motive and the danger of unfair prejudice substantially outweighed the probative value. In deciding that evidence of all three incidents was admissible, the court concluded that they were specially relevant to prove motive and intent. Then, in moving to strike the testimony during trial, Mr. Carter argued that “the exertion of control[,] constructive or actual [] by Mr. Carter” was “not borne out by [V]’s testimony” because V testified that she was able to separate from Mr. Carter on occasion. The State replied that her ability to separate did not negate the exertion of control, that the evidence was relevant to “demonstrating violence and a cycle of violence,” and that the “cycle of violence is exerted through control and jealousy.” The court denied Mr. Carter’s motion to strike without stating its reasoning.

On appeal, Mr. Carter argues that the three incidents are not substantially relevant to a disputed issue in the case, which he contends was “the severity of the assault and whether or not a sexual assault had occurred.” He argues *first* that cases holding that incidents of prior abuse of the victims by the defendant are admissible do not apply because Mr. Carter’s identity as the assailant was not in dispute. He argues *second* that evidence of the 2015 sexual assault incident is inadmissible propensity evidence.

We hold that evidence of the three previous assault incidents here was relevant to prove motive and intent, which were disputed issues in the case. “Motive is the catalyst

that provides the reason for a person to engage in criminal activity.” *Snyder v. State*, 361 Md. 580, 604 (2000). “Like intent, motive is a mental state, the proof of which necessarily requires inferences to be drawn from conduct or extrinsic acts.” *Id.* (quoting *Johnson v. State*, 332 Md. 456, 471 (1993)). And “[t]o be admissible as evidence of motive [] the prior conduct must be committed within such time, or show such relationship to the main charge, as to make connection obvious, that is to say they are so linked in point of time or circumstances as to show intent or motive.” *Id.* at 605 (cleaned up). For cases involving domestic violence in particular, “[e]vidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive.” *Id.* And although motive is not an element of the crimes with which Mr. Carter was charged, it is relevant to the proof of intent, another exception to Rule 5-404. *Id.*

This case is similar to *Jackson v. State*, in which the defendant’s history of domestic abuse of his girlfriend was “clearly probative” of his motive for assault. 230 Md. App. 450, 461 (2016). In *Jackson*, where the defendant was charged with first- and second-degree assault, and admitted to assaulting the victim, we held that testimony that the victim and the defendant had a “violent” relationship and about prior assaults of the victim by the defendant were admissible. *Id.* at 458, 461. As in *Jackson*, the motive here was “the exertion of control over the victim through the perpetration of a cycle of violence.” *Id.* at 461. The three earlier incidents were substantially relevant to Mr. Carter’s motive and intent to cause serious physical injury to V, an element that distinguishes first-degree assault from second-degree assault. Md. Code (2002, 2021 Repl. Vol.), § 3-202(b)(1) of

the Criminal Law Article (“CR”). And evidence of the 2015 sexual assault was relevant to proving Mr. Carter’s intent to forcibly insert his fingers into V’s vagina and rectum. Force or lack of consent are elements of second-degree rape and third-degree sexual offense, CR § 3-304(a)(1), § 3-307(a), and Mr. Carter’s intent as to the rape and sex offense charges was contested because he contended that any injuries V suffered were the result of consensual “crazy sex.” As defense counsel asserted in the opening statement, that is what Mr. Carter and V do “in a state of intoxication after they get into arguments.”

Mr. Carter rejoins *first* that this case is distinguishable from the line of cases holding evidence of previous assaults relevant because in at least three of those cases, the defendants were charged with murdering their wives, and identity, not intent, was the contested issue. *See Snyder*, 361 Md. at 601 (evidence of murder victim’s “stormy” relationship with her husband was admissible where husband’s trial for wife’s murder was years after it occurred and evidence linking him to the crime was circumstantial); *Stevenson v. State*, 222 Md. App. 118, 149–50 (2015) (testimony that defendant physically abused the victim in the month before victim’s murder was admissible in case where defendant denied killing his wife); *Jones v. State*, 182 Md. 653, 656–57 (1944) (evidence of history of violent acts directed at wife were admissible in husband’s murder trial). In contrast, Mr. Carter argues, the identity of V’s assailant is not at issue here—Mr. Carter admitted throwing things at her. But he doesn’t explain *why* the general principle that “[e]vidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive,” *Snyder*, 361 Md. at 602, doesn’t apply where identity is not

at issue. And in *Jackson*, as we explained above, evidence of previous altercations between the victim and the defendant was admissible under Maryland Rule 5-404(b) even though the defendant's identity wasn't disputed.

Mr. Carter argues *second* that the court erred in admitting evidence of the 2015 sexual assault on the ground that it was inadmissible propensity evidence, *i.e.*, that “[t]he value of this evidence was only to show the jury that Mr. Carter had a propensity for this type of sexual violence, which is exactly what the rules of evidence are designed to prevent.” See *Snyder*, 361 Md. at 603 (“[E]vidence is inadmissible if offered for the purpose of proving criminal propensity.”). He asserts that the State produced no evidence connecting the 2015 fight and the 2019 incident at issue. We disagree. As the State points out, and similarly to the 2019 incident, the catalyst for the 2015 incident was jealousy. To the extent that Mr. Carter argues the court abused its discretion in admitting the testimony regarding the 2015 incident because its relevance was substantially outweighed by unfair prejudice, we disagree. That evidence was prejudicial to Mr. Carter—it surely weakened his defense—but we disagree that the prejudice was unfair. V qualified her testimony by stating that “he has never been, like, a sexual deviant, or, like, mean in that way. So it’s just strange that these two incidents—I don’t know that person, because that’s definitely not the person that I married or grew up with.” And as the State points out, the court gave the jury a limiting instruction to consider the previous assaultive conduct “only on the question of motive,” and that the jury “may not consider it as evidence that [Mr. Carter] is of bad character or has a tendency to commit crime.”

In sum, evidence of all three incidents was specially relevant to establishing Mr. Carter’s motive and intent to assault and sexually assault V by demonstrating the cycle of Mr. Carter’s exertion of control over her. V testified that she had been “willing to lie for him and say, oh, well, he didn’t do it. He got rough with me.” She also testified that “I have always felt, like, intimidated by him. I knew he wanted me to help him so – I don’t know.” And finally, she stated that after watching the body camera footage of her exchange with Officer Collins, “[i]t was shocking to [her] that [she] was so oblivious to the way that [her] life was that [she] thought that was normal.” In short, evidence of the cycle of violence and control was “so closely connected to the offense[s] charged as to be evidence as to the intent and motive” of Mr. Carter in committing the charged offenses. *Jones*, 182 Md. at 657.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**