Circuit Court for Howard County
Case No. C-13-CR-20-000007

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 312

September Term, 2022

PERRI LYNN MATEYKA

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Shaw,

JJ.

Opinion by Friedman, J.

Filed: January 9, 2024

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

Appellant, Perri Lynn Mateyka, was convicted in the Circuit Court for Howard County for failing to control speed to avoid collision, reckless driving, driving while under the influence of alcohol, driving while impaired by alcohol, and driving with alcohol in her blood on a restricted license. Mateyka raises several issues on appeal,[1] all of which boil down to a claim that the circuit court erred when it excluded a 2015 recall notice on her vehicle.[2] For the reasons that follow, we affirm the judgments of the circuit court.

BACKGROUND

The parties generally agreed on the following facts. Mateyka drove her car home from the American Legion Hall. She backed her car into her own driveway where she

[1] Mateyka raises four arguments:

1. [the circuit court] improperly grafted the *Daubert-Rochkind* standard for expert testimony admissibility onto Rule 5-403, resulting in an erroneous and unfair evidentiary burden on [Mateyka].
2. [the circuit court] failed to perform the required balancing under Rule 5-403 and, instead, simply excluded evidence relating to the recall notice based on its erroneous application of *Daubert-Rochkind*.
3. under the circumstances, [the court] deprived [Mateyka] of her fundamental constitutional right to present a complete defense.
4. [the court's] error was not harmless, as the State's contention that the accident was caused by [Mateyka's] inebriation was at the heart of all counts against her, as well as the [court's] substantial restitution order.

[2] Mateyka also presents arguments regarding remarks made by the State during its closing as to her truthfulness on the stand. Mateyka did not, however, object during the State's closing arguments. As such the issue is not preserved. MD. R. 8-131(a); *see also Warren v. State*, 205 Md. App. 93, 132-33 (2012) ("[A]ppellant failed to lodge any objection whatsoever during the State's closing argument and failed to object to the comments at issue in this appeal during the State's rebuttal closing argument. As such, any issue as to the prosecutor's remarks is not preserved for appellate review.").

collided with a trailer. Her car then pulled forward, crossed the street, crashed through a fence, and hit two of her neighbor's cars. Soon thereafter, the police arrived, determined that Mateyka had been drinking, and arrested her. Mateyka was taken to the Howard County Detention Center, where her blood alcohol content was measured as 0.17, significantly over the legal limit of 0.08.

The State's theory of the case was that Mateyka was drinking at the American Legion Hall and that the accident that followed was the result of her intoxication. Mateyka denied being intoxicated at the American Legion Hall. Her theory of the case was that when she attempted to back into her own driveway, the car malfunctioned and hit the trailer. When she tried to pull forward to assess the damage, her car malfunctioned again and suddenly accelerated, causing her to lose control as the car crossed the street, crashed through the fence, and hit the neighbor's cars. Moreover, she was so distressed by the events that she drank straight vodka from her freezer to calm her nerves.

The jury heard testimony from Mateyka, the police officer who arrived at the scene, neighbors who witnessed the accident and its aftermath, and even watched security camera footage, that could support either the State's theory that Mateyka drank *before* the accident or Mateyka's claim that she only drank *after* the accident. The jury appears to have believed the State's version of these events and Mateyka has alleged no errors regarding this aspect of the case, so we will not discuss it further.

In support of her theory that the car malfunctioned, Mateyka offered into evidence a recall notice issued by the National Highway Traffic Safety Administration in 2015 for her car, a 2011 Kia Sorento. According to the recall notice:

> Kia Motors America is recalling certain model year 2011-2013 Kia Sorento vehicles manufactured [between] October 19, 2009 to January 31, 2013. In the affected vehicles, if excessive force is applied to the gear shift lever, the brake-shift interlock mechanism may chip or crack allowing the transmission being able to be shifted out of "park" without the brakes being depressed.

The State opposed the introduction of the recall notice. The trial court ruled that the recall notice was relevant as defined by Rule 5-401, but without expert testimony to explain how the defect described by the recall notice could have caused the accident, was substantially more prejudicial than probative, and was therefore inadmissible under Rule 5-403.

DISCUSSION

In this Court, Mateyka offers a series of challenges, each designed to argue that the trial court erred in refusing to admit the recall notice into evidence. We will reject them all.

First, we agree with the State that the trial court erred in finding that the recall notice was relevant at all. As we read the recall notice, it warned of the possibility that this type of car might *unintentionally* shift out of park and roll. Mateyka's description of the malfunction was entirely different. If she was to be believed, she *intentionally* shifted her car out of park, and then the car suddenly accelerated. The recall notice (and the defect it described) have no relationship whatsoever to the events Mateyka described. As a result, the recall notice was neither material nor did it have probative value and therefore it was not relevant. *See generally Molina v. State*, 244 Md. App. 67, 127 (2019) (defining "material," "probative value," and "relevance"). Although this holding alone is a sufficient basis for affirming Mateyka's convictions, *State v. Sewell*, 463 Md. 291, 316 n.7 (2019) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)), in the interest of completeness, we continue.

Second, Mateyka gloms onto the trial court's suggestion that an expert witness might make the necessary connection between the recall notice and Mateyka's description of the accident. From that suggestion, Mateyka constructs the counterfactual argument that the trial court erroneously applied the test for expert witnesses. But nobody proffered an expert witness in this case. Therefore, the Rules governing an expert witness's qualification and the admissibility of their opinions were not at issue. It didn't happen. Therefore, we hold there was no error.

Third, as noted above, the trial court held that although the recall notice was relevant, without an expert witness, under Rule 5-403, the probative value of the recall notice was substantially outweighed by the potential harm of its admission. Mateyka argues that the trial court erred in the manner in which it conducted this weighing. We imagine a balancing scale. On one side of the scale is the relevance of the recall notice. Assuming for the sake of argument that the recall notice had some relevance, it was of minor relevance. On the other side of the scale, Rule 5-403 instructs the trial court to consider potential harms, including (1) "the danger of unfair prejudice," (2) "confusion of the issues, or misleading the jury," or (3) "by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Here, the trial court found that the minimal relevance of the recall notice—and, remember, we hold that it had none—was substantially outweighed by the risk of confusing the issues or misleading the jury. We see no abuse of the trial court's considerable discretion here.

Finally, Mateyka argues that by keeping out the recall notice, the trial court deprived her of her constitutional right to trial. Both the U.S. Constitution and the Maryland

Declaration of Rights guarantee that a criminal defendant is given "every opportunity, *within procedural and evidentiary boundaries*, to present a defense." *Kelly v. State*, 392 Md. 511, 533 (2006) (emphasis added). As we have previously explained:

> the right to present a defense, albeit fundamental, is nonetheless subject "to two paramount rules of evidence, embodied both in case law and in Maryland Rules 5-402 and 5-403. The first is that *evidence that is not relevant to a material issue is inadmissible*. The second is that, *even if relevant*, *evidence may be excluded if its probative value is substantially outweighed by the danger of* unfair prejudice*, confusion of the issues, or misleading the jury.*"

Taneja v. State, 231 Md. App. 1, 11 (2016) (cleaned up) (emphasis in original). Because the recall notice was not relevant and because whatever relevance it may have had was substantially outweighed by its potential to confuse the issues or mislead the jury, the trial court did not err in refusing to admit it. As a result, Mateyka was not denied her constitutional right to defend herself.[3]

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Because we find no error, we need not, and do not, address Mateyka's arguments that the trial court's error was not harmless.