

Circuit Court for Montgomery County
Case No. 136373C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1037

September Term, 2023

JEAN JOCELIN PIERRE

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Zic, J.

Filed: March 28, 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 to Maryland Rule 1-104(a)(2)(B).

Jean Jocelin Pierre, appellant, was convicted of the murder of his wife, Nerlande Foreste, following a jury trial in the Circuit Court for Montgomery County. At trial, the State called Mr. Pierre's daughter, Jodeline, to testify regarding arguments she witnessed between Mr. Pierre and Ms. Foreste. Defense counsel objected to this line of questioning, arguing that Jodeline's testimony was inadmissible character evidence of other bad acts because the argument concerned Mr. Pierre's alleged infidelity. The court found Jodeline's testimony admissible as evidence of discord within the marriage and proof of motive. Mr. Pierre was convicted of second-degree murder and sentenced to forty years' imprisonment. This appeal followed.

QUESTIONS PRESENTED

Mr. Pierre presents two questions for our review, which we have reproduced here:

- I. Did the trial court err in admitting other bad acts evidence of Mr. Pierre's alleged infidelity?
- II. Did the trial court commit plain error in permitting the prosecutor to argue law to the jury regarding the reasonable doubt standard?

For the following reasons, we affirm.

BACKGROUND

This case arose from the disappearance of Ms. Foreste. Jodeline Pierre, Mr. Pierre's daughter and Ms. Foreste's stepdaughter, testified at trial that she last saw Ms. Foreste on August 21, 2019, when Ms. Foreste returned home to the apartment that the three shared. Jodeline left home later that evening to attend a church event. When Jodeline texted Mr. Pierre and Ms. Foreste to ask for a car ride home, she received no response. Mr. Pierre eventually called Jodeline from the home's landline and explained

that he lost his cell phone. Jodeline did not see or speak to Ms. Foreste upon returning home. The following day, Jodeline could not find Ms. Foreste but did locate her car keys and purse inside Mr. Pierre and Ms. Foreste’s bedroom.

Jodeline repeatedly attempted to reach Ms. Foreste over the next two days. Jodeline asked Mr. Pierre about Ms. Foreste’s whereabouts, and Jodeline later testified: “[H]e said oh, who knows, maybe she left. Maybe she just decided to leave.” On August 24, 2019, Jodeline went to the police to report Ms. Foreste missing. At the police station, Jodeline learned Mr. Pierre had already filed a missing person’s report.

When police arrived to interview Mr. Pierre and inspect the apartment, they noticed a laceration on Mr. Pierre’s arm, as well as bleach and paper towels, and detected the smell of cleaning supplies. During his interview with police, Mr. Pierre stated that Ms. Foreste had stopped speaking to him and that he suspected her of infidelity. Mr. Pierre stated that on the morning of August 22, he witnessed Ms. Foreste leave the apartment with her purse, but that her work badge, phone, and house keys were in the apartment. Because he suspected her of infidelity, Mr. Pierre said he was unconcerned when he returned that evening, and Ms. Foreste had not yet come home.

Police took Mr. Pierre into custody on August 28, 2019. On September 26, 2019, Mr. Pierre was indicted for the murder of Ms. Foreste.

On the first day of Mr. Pierre’s trial, Jodeline recounted observing an argument between Mr. Pierre and Ms. Foreste about Mr. Pierre’s alleged romantic relationship with the mother of Jodeline’s half-sister. Defense counsel objected to this testimony about Mr. Pierre’s alleged infidelity as inadmissible character evidence of prior bad acts. The

State countered that the evidence went to motive and explained that Mr. Pierre and Ms. Foreste’s argument demonstrated discord in the marriage, which the State claimed threatened Mr. Pierre and Jodeline’s Permanent Resident applications (referred to as “Green Card” applications). After a bench conference, the court allowed Jodeline’s testimony regarding the argument only as it tended to show discord within Mr. Pierre and Ms. Foreste’s marriage.

During the State’s closing rebuttal, counsel restated the pattern jury instruction on reasonable doubt and used two narrative examples to explain the reasonable doubt standard to the jury. The first example was of a parent putting his or her child on a school bus on the first day of kindergarten, and how the surrounding circumstances allow parents to trust the bus driver “beyond a reasonable doubt[.]” The second example was of a patient undergoing anesthesia for surgery and discussed how the surrounding circumstances allow the patient to trust the anesthesiologist “beyond a reasonable doubt[.]” Mr. Pierre’s counsel did not object to these examples. The jury convicted Mr. Pierre of second-degree murder. We supplement the facts in our analysis below as needed.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN ADMITTING JODELINE’S TESTIMONY REGARDING THE ARGUMENT BETWEEN MR. PIERRE AND MS. FORESTE.

In his brief, Mr. Pierre argues that the court erred by allowing Jodeline’s testimony regarding Mr. Pierre’s alleged infidelity because it was inadmissible evidence of prior bad acts pursuant to Maryland Rule 5-404(b). The State argues that Mr. Pierre “did not

preserve his specific 5-404(b) appellate contentions[,]” because Mr. Pierre’s counsel did not consistently or contemporaneously object. The State alternatively contends that Jodeline’s testimony was not evidence of bad acts but instead was admitted only to show discord in the marriage as relevant to motive.

A. Preservation

The State argues that defense counsel did not object to Jodeline’s limited testimony that she “heard or saw kind of an argument” about the mother of her half-sister and that “the fight was about kind of her finding out about” Mr. Peirre and the mother of Jodeline’s half-sister. The State specifically argues that Mr. Pierre’s counsel did not request a continuing objection, and that because the court made a provisional ruling, Mr. Pierre’s counsel “needed to object to the State’s question or Jodeline’s answer to preserve his challenge to that evidence” pursuant to the contemporaneous objection rule. Mr. Pierre responds that the court’s ruling was not provisional because the record makes clear that “the court understood that defense counsel objected to the admission of the evidence, under any and all circumstances.” Mr. Pierre alternatively argues that “insofar as the court’s ruling was conditioned on the State eliciting the testimony as described by the State, that condition was met and the court’s supposed provisional ruling to admit the evidence thereby came into effect.”

The contemporaneous objection rule provides that “[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.” Md. Rule 4-323(a). “The exception to the general rule for a contemporaneous objection is when it

is apparent that any further ruling would be unfavorable, *i.e.*, an objection would be futile.” *Wright v. State*, 247 Md. App. 216, 228, (2020), *aff’d*, 474 Md. 467 (2021) (citation omitted); *see Johnson v. State*, 325 Md. 511, 515 (1992).

During Jodeline’s testimony, the State questioned Jodeline about arguments she witnessed between Mr. Pierre and Ms. Foreste:

[STATE]: Okay. And did there come a time when you noticed through your own observation their relationship changing?

[JODELINE]: Yes, for sure. It was maybe a year or two into the relationship, and I feel like trust started to not be very present in the relationship, so things started changing.

[STATE]: Okay. And were you there when there would be fights between the two of them or arguments?

[JODELINE]: Yes, arguments for sure. I have, yes.

The State went on to ask Jodeline about the relationship between Mr. Pierre and the mother of her half-sister, at which point the following exchange occurred:

[STATE]: Do you recognize who’s in this picture?

[JODELINE]: Yes, it’s my little sister and [her mother], sorry.

[STATE]: Okay.

[DEFENSE]: Your Honor, can we approach?

THE COURT: Sure.

During the bench conference, the parties had a lengthy discussion regarding the admissibility of Jodeline’s testimony. Mr. Pierre’s counsel questioned the relevancy of Jodeline’s testimony about Mr. Pierre and Ms. Foreste’s argument regarding Mr. Pierre’s

relationship with another woman, arguing: “This is a wholesale character assassination, he’s a cheater, he’s a philanderer, he has got multiple women and kids on the side. I mean, come on. There’s nothing relevant[.]” The State argued that the testimony regarding the argument between Mr. Pierre and Ms. Foreste regarding alleged infidelity went to motive because the dissolution of the marriage would threaten Mr. Pierre’s Green Card status. The court then stated:

Well first of all, the evidence of discord and the basis for it, as I understand the theory, I think that does have a bearing on the case. I can’t say that it’s irrelevant. Is it prejudicial? Clearly. Is it unfairly prejudicial? If it had [] to do with some other bad act other than the disagreement and discord and basis for it in the marriage, I would be much more inclined to not permit it because then I think your argument that it’s being introduced just to paint him as a bad person is a lot stronger. But if it does go to the discord in the marriage, then I think it’s relevant to what is asserted to have occurred here, which was the assertion is that this was her murder and that he was the one that did it. So I think that prior discord is relevant and what it was about is relevant.

The court ultimately ruled that:

[D]epending on the question and the answer, I mean, just as I understand the general purpose of it, I’m going to allow it. I think it does go to motive. I think it is relevant. It does pertain to the discord between the parties, and it tends to establish a fact and issue in the case is more likely so than not so. So I understand it’s prejudicial. I don’t believe it’s unfairly prejudicial as it might be if this were about some conduct that was unrelated to the party’s marriage or the disagreements between them. So depending on the question and answer, as I understand the general idea as described by the State, I’ll allow it.

The ruling demonstrated that the court was permitting the prosecutor to continue to elicit testimony regarding the argument because “it does go to motive.” While there

was no contemporaneous objection to the next question regarding the argument Jodeline testified to, the conference is a clear indication that an objection would have been futile. *See Wright*, 247 Md. App. at 228. It was apparent that the ruling on a further objection would be unfavorable to the defense, thus meeting the exception to the contemporaneous objection rule. We conclude, therefore, that the issue is preserved for our review.

B. Bad Acts Evidence

“It is well established in this State that the admission of evidence is committed to the considerable discretion of the trial court.” *Sifrit v. State*, 383 Md. 116, 128 (2004) (citations omitted). More specifically, “[t]he admission of other crimes evidence is vested within the sound discretion of the trial court and we will not overrule the decision of the trial court unless there has been an abuse of discretion.” *Brice v. State*, 226 Md. App. 666, 691 (2015) (citation and quotation marks omitted).

Maryland Rule 5-404(b) provides:

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. Such evidence, however, may be admissible for other purposes, such as proof of *motive*, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

(Emphasis added). “[A] bad act is 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.” *Klaenberg v. State*, 355 Md. 528, 549 (1999).

When testimony resumed following the bench conference, Jodeline testified as follows:

[STATE]: Jodeleine [sic], was there a time when you heard or saw kind of an argument between your dad and your stepmom about [your half-sister and her mother]?

[JODELINE]: Yes.

[STATE]: Okay. And do you remember when that was?

[JODELINE]: Not really. No time or day or year or anything.

[STATE]: Okay. And before this argument -- well, before this argument, do you know if, only if you know, if [Ms. Foreste] knew about your -- [half-sister and her mother]?

[JODELINE]: I'm sure she had suspicions.

[DEFENSE]: Objection.

THE COURT: Sustained.

[STATE]: Okay. So you just have to tell me from what you observed, kind of not guesses.

[JODELINE]: Okay.

[STATE]: Does that make sense?

[JODELINE]: Yes. I guess not, no.

[STATE]: Okay. And was the fight about kind of her finding out about them?

[JODELINE]: Yes. Yes.

In his brief before this Court, Mr. Pierre argues that Jodeline's testimony was evidence of Mr. Pierre's infidelity and was inadmissible as prior bad acts evidence pursuant to Maryland Rule 5-404(b). Mr. Pierre cites *Snyder v. State*, 361 Md. 580, 605 (2000), which states that "[e]vidence of previous quarrels and difficulties between a

victim and a defendant is generally admissible to show motive.” Mr. Pierre, however, argues that “the State did not merely elicit evidence of quarrels and discord in the marriage. The State elicited evidence that Mr. Pierre was an unfaithful husband[.]”

The State contends Jodeline’s testimony spoke to the fact that the couple argued about alleged infidelity, not that Mr. Pierre was actually unfaithful, and cites *Burrall v. State*, 118 Md. App. 288, 296-98 (1997), *aff’d on other grounds*, 352 Md. 707 (1999) (The statement that the defendant “had been to prison” was “an oblique, ambiguous reference to previous criminal activity, at best, and not the kind of direct and unequivocal evidence that [Rule 5-404(b)] contemplates excluding.”). The State additionally argues that Jodeline’s testimony had special relevance to motive because it “tended to show quarreling and discord” in the marriage, which threatened Mr. Pierre’s Green Card status, leading to Ms. Foreste’s murder.

When offering evidence for other purposes, such as proof of motive, the evidence must be “substantially relevant” to that issue and “the evidence must be clear and convincing in establishing the accused’s involvement in the prior bad acts. *Gutierrez v. State*, 423 Md. 476, 489 (2011) (citations and quotation marks omitted) Additionally, “the evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” *Id.* at 490 (citations and quotation marks omitted).

Here, Jodeline testified regarding an argument that she witnessed between Mr. Pierre and Ms. Foreste about alleged infidelity. The State offered Jodeline’s testimony as evidence of motive, specifically that the discord in the marriage would ultimately threaten Mr. Pierre’s Green Card status, stating: “So the fact that there was discord in the

marriage and that she knew that he had all this other stuff going on is incredibly important because, in the State’s position, that’s literally, that is the motive for the murder.”

The circuit court acknowledged the argument regarding alleged infidelity may be bad acts evidence; however, the court noted that the evidence did go to motive as an exception to the rule and that it is not unfairly prejudicial. We, therefore, hold that the circuit court did not abuse its discretion by admitting Jodeline’s testimony as proof of motive and not unfairly prejudicial.

II. WE DECLINE TO EXERCISE PLAIN ERROR REVIEW REGARDING THE STATE’S USE OF NARRATIVE EXAMPLES DURING CLOSING ARGUMENTS.

Mr. Pierre also argues that the circuit court committed plain error in permitting the State to “argue law to the jury” during closing arguments regarding the reasonable doubt standard. The State argues that the requirements for plain error review are not satisfied because Mr. Pierre “has not identified a clear or obvious material error[.]”

Although this Court has the discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Supreme Court of Maryland has emphasized that “[i]t is a discretion that appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court’s ruling, action, or conduct be presented in the first instance to the trial court[.]” *Ray v. State*, 435 Md. 1, 23 (2013) (internal citation omitted). Therefore, “[p]lain error review is reserved for those errors that are compelling, extraordinary,

exceptional[,] or fundamental to assure the defendant of a fair trial.” *Savoy v. State*, 218 Md. App. 130, 145 (2014) (internal citation and quotations omitted).

Mr. Pierre asks us to review two instances in the State’s closing rebuttal, where the prosecutor explained the reasonable doubt standard using narrative examples. The first example was about parents placing their children on a school bus on the first day of kindergarten:

Do you know beyond any doubt that that bus driver is actually the person that they’re supposed to be or that they are 100 percent going to get your child to school? Do you look at their driver’s license; do you look at their accident history; do you call the school and say, this is -- Ms. Smith, is she one of your bus drivers? No. But you know from all those surrounding circumstances, from all that other evidence that you see, beyond a reasonable doubt, that you can feel comfortable putting your child on that bus. Now that is, obviously, your child. That is an important decision, but it is also a decision that you make regularly.

The second example referred to a patient having surgery while under anesthesia:

Do you ask to look at exactly what is in that bag that is going into your body? Do you ask for the chemical tests to make sure that what is being given to you won’t kill you? Do you ask for confirmation that this anesthesiologist has received his degree and has done his fellowship? No, because you know from all of the circumstances around, beyond a reasonable doubt, given everything else you see, that you can trust that that anesthesiologist is giving you something that is going to help you through this procedure and is not going to kill you.

Mr. Pierre’s counsel did not object to these remarks at trial.

The circumstances present here are not extraordinary or fundamental to assure the defendant a fair trial. *Savoy*, 218 Md. App. at 145. As such, we decline to overlook the lack of preservation and will not exercise our discretion to engage in plain error review.

See Morris v. State, 153 Md. App. 480, 506-07 (2003) (noting that the words “[w]e decline to do so” are “all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation” (emphasis and footnote omitted)).

CONCLUSION

We hold that, while Mr. Pierre’s argument is preserved for our review, the circuit court did not abuse its discretion in admitting testimony regarding the argument between Mr. Pierre and Ms. Foreste at trial as it went to motive and was not unfairly prejudicial. Additionally, we decline to exercise plain error review regarding the State’s use of narrative examples during closing arguments.

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